Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

_____ Term, 19___

No. 79-810

JEROME A. (JERRY) KNAPP - - Appellant

versus

COMMONWEALTH OF KENTUCKY - - Appellee

On Appeal from the Supreme Court
of the State of Kentucky

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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OPINIONS BELOW

The Memorandum Opinion Per Curiam Affirming the conviction of appellant by the Supreme Court of Kentucky (being the highest court of the state), was rendered on June 12, 1979, and a Petition for Rehearing, Modification or Extension was denied and its mandate issued on July 24, 1979, copies of which are in the Appendix, *infra.*

JURISDICTION

This is a criminal case under Indictment No. 11922 in McCracken County Circuit Court, Paducah, Kentucky, wherein appellant was found guilty for violation of Kentucky Revised Statute 516.060.

Date of the judgment, decree or opinion sought to be reviewed was rendered on June 12, 1979 and the petition for rehearing was denied on July 24, 1979; time of entry unknown.

Date of order of the Supreme Court of Kentucky was rendered on August 23, 1979 granting appellant a stay of execution and enforcement of the mandate under CR 76.44 of the Kentucky Rules of Criminal Procedure and granting appellant time to file a writ of certiorari to the Supreme Court of the United States within the 90-day period prescribed by law. A motion to reconsider the Court's order was filed by appellee on August 23, 1979 and the Supreme Court of Kentucky denied the same on September 4, 1979, copies of which are in the *Appendix,* infra.

Jurisdiction of the Supreme Court of the United States is invoked under Title 28 USC Section 1257(3) and Title 28 USC Section 2101(d), through a writ of certiorari, to review the final judgment, decree or opinion of the highest court of the state being the Supreme Court of Kentucky.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Sheriff of McCracken County unlawfully searched and seized evidence on April 14, 1976 without a lawful search warrant consisting of corporate and personal records of appellant after a third motion to suppress filed on September 21, 1976 was denied by the trial court, in violation of appellant's rights under the Fourth Amendment of the U. S. Constitution.

2. Whether appellant was illegally arrested on April 9, 1976 with no probable cause, in violation of the Fourth Amendment of the U. S. Constitution.

3. Whether the affidavit for search warrant executed on April 14, 1976 specified with particularity both the place to be searched and the items in plain view that can be searched for and seized, in violation of the Fourth Amendment of the U. S. Constitution.

4. Whether there was a showing of probable cause by the person issuing the warrant with precise information from which he could make his own determination that a crime had been committed by appellant and the items subject to seizure were where the applicant wanted to search, in violation of the Fourth Amendment of the U. S. Constitution.

5. Whether a search warrant was in existence on April 14, 1976 where Court's Exhibit No. 3 (First Search Warrant) had no date, no signature and no property found or listed thereon from Court's Exhibit No. 4 (Second Search Warrant) executed on April 14, 1976 at 10:07 a.m. o'clock, with no property found or listed thereon and with no signature of the officer making the search and seizure (in violation of the U. S. Constitution for questions presented for review hereinafter).

6. Whether Court's Exhibit No. 3 (Return of Property Found) on a separate sheet of paper with no date, no signature and a truckload of evidence seized went beyond the scope of the affidavit, in violation of the Fourth and Fourteenth Amendments to the U. S. Constitution.

7. Whether the indictment returned on April 16, 1976 was in conformity with the statute (KRS 516.060) and the instructions of the trial court to the jury, in violation of the Equal Protection Clause of the Fourteenth Amendment of the U. S. Constitution.

8. Whether a petition and a notice of change in venue for a fair trial denied by the trial court on August 31, 1977 was in violation of appellant's rights under the equal protection of the laws of the Fourteenth Amendment or any other pertinent amendment of the U. S. Constitution.

9. Whether the Sheriff of McCracken County unlawfully seized corporate records of fiscal year April 1, 1975 and ending March 31, 1976 in connection with the corporate profit or loss for income tax purposes, in violation of the Fourth and Fourteenth Amendments to the U. S. Constitution.

10. Whether the trial court erred in denying appellant's consolidated motion for suppression of evidence and/or dismissal of indictment filed on December 8, 1976, in violation of the Fourth and Fourteenth Amendments to the U. S. Constitution.

11. Whether the trial court erred by denying appellant's motion to produce exhibits not attached to the affidavit for search warrant and the supplemental motion to the consolidated motion for suppression of evidence and/or dismissal of indictment, both filed on January 26, 1977, in violation of the Fourth Amendment to the U. S. Constitution.

12. Whether the Sheriff of McCracken County unlawfully seized records of students which were part

and parcel of a "system of records" from the corporation (Institute of Electronic Technology a/k/a IET) without prior written consent of the students, in violation of Title 5, USC Section 522a, et seq., where appellant's second motion to suppress evidence was filed on September 17, 1976 and denied by the trial court.

13. Whether the prosecution proved all of the elements of the crime beyond a reasonable doubt, under KRS 516.060.

14. Whether the trial court erred in denying appellant's motion for directed verdict at close of the Commonwealth's case based upon failure to prove every element of the crime.

15. Whether it was error and an abuse of discretion under all the circumstances for the trial court to deny appellant the benefit of the expert testimony of James Debowski, where the prosecution had to prove appellant's "knowledge" of a forged instrument, or whether the instruments were forged.

16. Whether the trial court erred by denying appellant's motion to allow analysis of handwriting signatures filed on January 27, 1977 and the motion to allow spectograph analysis of signature of Court's Exhibit Nos. 1, 2 and 4 filed on January 26, 1977.

17. Whether substantial errors were made in the trial court's instructions on October 6, 1977, which instructions misled and confused the jury as to the guilt or innocence or amount of punishment of appellant.

18. Whether the trial court erred in giving Instruction Nos. 17 and 18 because of the confusing and misleading definition of "reasonable doubt" applied to

the case as a "whole", instead of restricting it to "each count".

19. Whether the trial court erred in instructing the jury upon a theory of the case not sustained by the evidence, or upon a theory opposed to the evidence and prejudicial to appellant.

20. Whether the trial court and prosecution erred in sentencing appellant on count No. 4 which was both dismissed and retained, and count No. 2 which was neither dismissed nor retained, and dismissing counts 17 through 41, incl. after the jury heard and saw evidence relative to certain counts which should have never been before the jury because of the possibility of prejudice.

21. Whether the trial court erred in not distinguishing the appellant as an employee of the corporation from the corporation itself.

22. Whether the trial court erred in introducing inadmissible evidence where the Commonwealth admitted in its response to defendant's motion for suppression of evidence filed on September 17, 1976 that the contracts in question are between the corporation (IET) and Associates Financial Services of Kentucky, Inc. (Associates) and not between the students and Associates.

23. Whether the prosecution erred in not complying with appellant's first supplemental motion for Bill of Particulars and/or to dismiss indictment with appellant's affidavit dated December 7, 1976, filed on December 8, 1976.

24. Whether the prosecution complied with appellant's motion for discovery and inspection filed on September 21, 1976 and granted by the trial court on September 27, 1976 in connection with the third drawer of the filing cabinet in the prosecutor's office which contained evidence relative to the indictment of appellant.

25. Whether the prosecution complied with appellant's second supplemental motion for bill of particulars and/or dismiss indictment filed on June 20, 1977.

26. Whether the trial court erred in denying appellant's supplemental motion to suppress and/or to dismiss filed on August 22, 1977 and August 26, 1977, respectively.

27. Whether the 41 count indictment violated Regulation "Z" of the Federal Reserve Board where appellant's first motion to suppress evidence and for dismissal of indictment filed on September 2, 1976 was denied by the trial court at a pre-trial hearing on September 27, 1976.

28. Whether the prosecution complied with the trial court's order of February 10, 1977 as to paragraphs No. 1 and No. 2 in appellant's motion to produce and disclose filed on February 7, 1977 and whether the trial court erred in denying appellant paragraph No. 3 of said motion.

29. Whether the trial court erred in denying appellant's motion for directed verdict at close of appellant's case, filed on October 4, 1977.

30. Whether the trial court erred in denying appellant's motion for new trial filed on October 11, 1977 and heard on October 28, 1977.

31. Whether the prosecution committed reversible error by not introducing relevant and competent evidence to support its opening and closing statements in the record of this case.

32. Whether the prosecution violated Kentucky Revised Statute 360.260 stating that state law shall require disclosure of items of information substantially similar to the requirements of any applicable Federal law.

33. Whether the evidence on an insufficient count would taint the entire conviction.

34. Whether the sentence of 20 years in prison was in violation of the 8th Amendment of the U. S. Constitution and case law of this Court.

35. Whether the trial court erred in sentencing appellant on four consecutive counts for the maximum penalty of 20 years allowed by Kentucky law, not stating which concurrent sentences were to run with a particular valid consecutive sentence, and the appellate court not passing on the validity of each consecutive sentence.

STATUTES INVOLVED

The individual Federal Constitutional Rights of appellant which were violated are the 4th, 5th, 6th, 8th and 14th Amendments to the U. S. Constitution, which briefly state as follows:

1. *First Amendment of the U. S. Constitution:* guarantees freedom of speech, press, assembly, right to petition, free exercise of religion and the prohibition of religious establishments.

2. *Fourth Amendment of the U. S. Constitution:* applies to arrest, and unreasonable search and seizure.

3. *Fifth Amendment of the U. S. Constitution:* prohibits double jeopardy, compulsory self-incrimination, and taking of private property without just compensation.

4. *Sixth Amendment of the U. S. Constitution:* applies to right of counsel, speedy and public trial, confrontation of witnesses, and compulsory process for witnesses.

5. *Eighth Amendment of the U. S. Constitution:* prohibits cruel and inhuman and unusual punishment.

6. *Procedural Due Process of the Fourteenth Amendment of the U. S. Constitution:* The Bill of Rights entitles persons accused of a crime to procedural safeguards. The Fifth and Fourteenth Amendment Due Process protects certain largely undefined liberty and property interests outside the criminal context.

Required Hearing is determined by:

1. Individual interest involved.
2. Value of safeguards to that interest.
3. Governmental interest in efficiency.

7. *Substantive Due Process of the Fourteenth Amendment of the U. S. Constitution:* now requires only that laws and regulations be rationally related to some legitimate governmental purpose, unless basic

civil or political liberties are infringed; economic legislation is now rarely overturned for irrationality.

8. *Equal Protection Clause of the Fourteenth Amendment of the U. S. Constitution:* is violated by invidious discrimination/or/arbitrary classifications bearing no rational relation to the object of legislation.

9. *Elements* of the crime under KRS 516.060 are as follows:

1. Appellant had the "knowledge" that the instruments were forged.

2. With the intent to defraud, deceive or injure another.

3. That he uttered or possessed any forged instrument of a kind specified in KRS 516.030.

The constitutional provisions and KRS 516.060 cited above and the Kentucky Rules of Criminal Procedure are set out verbatim in the appendix, *infra.*

STATEMENT

A concise statement under Rule 23(1)(e) containing the facts material to the consideration of the constitutional questions presented are as follows:

This is a criminal case in which defendant, Jerome A. (Jerry) Knapp, hereinafter referred to as "appellant", appeals to the Supreme Court of the United States from a judgment of conviction affirmed by the Supreme Court of Kentucky, being the highest court in the state, for violation of Kentucky Revised Statute 516.060 and sentencing appellant to twenty (20) years in prison under Indictment No. 11922 of McCracken County Circuit Court, Paducah, Kentucky.

Elements of the crime under KRS 516.060 are as follows:

1. Appellant had the *"knowledge"* that the instruments were forged.

2. With the *intent* to defraud, deceive or injure another.

3. And that he *uttered* or *possessed* any forged instrument of a kind specified in KRS 516.030.

The "arrest" of appellant was on April 9, 1976.

The "affidavit for search warrant" (Court's Exhibit No. 1) was executed by the prosecution and McCracken County Judge on April 14, 1976,

Search and seizure of the corporate records (Electronic Sales Engineers, Inc., d/b/a Institute of Electronic Technology, a/k/a IET), an Indiana corporation, and personal records of appellant-defendant, Jerome A. (Jerry) Knapp, consisting of a truckload of evidence, were taken by the prosecution and Sheriff of McCracken County on April 14, 1976.

The "indictment" was returned by the Grand Jury on April 16, 1976.

The "return of property found" (Court's Exhibit No. 2) was on a separate sheet of paper with no date, no signature and went beyond the scope of the affidavit with a truckload of fifteen (15) items of evidence.

The "first search warrant" (Court's Exhibit No. 3) had no date, no signature and no property found or listed thereon.

The "second search warrant" (Court's Exhibit No. 4) was executed by the County Judge on April 14, 1976 at 10:07 a.m. o'clock, with no property found or

listed thereon and with no signature of the officer making the search and seizure of the evidence.

The "search warrant" (Court's Exhibit No. 5) was a photocopy of the first search warrant, which is Court's Exhibit No. 3.

The Court's Exhibits are as follows:

No. 1	Affidavit	—Signed
No. 2	Return	—Unsigned
No. 3	Search Warrant	—Unsigned
No. 4	Search Warrant	—Signed but not a photo copy
No. 5	Search Warrant	—Photo copy unsigned

The trial date of this case was on September 12, 1977 and ended on October 6, 1977.

An order for an Appeal Bond in the penal sum of $12,500.00 was entered on November 4, 1977. Notice of Appeal to the Supreme Court of Kentucky and Designation of Contents of Record on Appeal were filed on November 8, 1977. The trial court, in its instructions, charged the jury that if you will find the defendant guilty, you will fix his punishment at confinement in the penitentiary for not less than one (1) year and not more than five (5) years, in your discretion. This was done under each of the sixteen (16) counts. The jury's verdict was five (5) years on each of the sixteen (16) counts, or, a period of eighty (80) years, which period was cut down to the maximum of twenty (20) years by the trial judge in its Trial Order and Judgment entered on the 6th day of October, 1977, in accordance with state law.

Appellant was born on July 27, 1935, 44 years of age, having three (3) children, namely Christine, 24

years of age, Jerome, Jr., 23 years of age, and Tracy, 17 years of age. Appellant was divorced in December 1972 and since that time he has had custody and raised his children. Appellant has a B.S. Degree in Electrical Engineering from Purdue University graduating in 1957, with a Masters Degree, working on his Doctorate. Appellant's first job was with his father, Edwin Knapp, 74 years of age, now living, who owned Knapp Electric Company, Evansville, Indiana.

Electronic Sales Engineers, Inc., an Indiana corporation, d/b/a Institute of Electronic Technology (a/k/a IET), was incorporated in 1964. Appellant owned 250 shares of capital stock of the corporation, being 50% owner and Richard G. May owned 250 shares, being the remaining 50%. The corporation (IET) redeemed the remaining 500 shares of the 1,000 shares of authorized capital stock in February, 1967.

Appellant was the president of IET between 1964 and 1969, working part-time in Paducah, Kentucky where the school was located. Richard G. May also worked part-time with a full-time manager. In 1969, appellant began working full-time in Paducah, Kentucky for the corporation as its president and employee. The school was located at 1301 Broadway, Paducah, McCracken County, Kentucky, 42001.

Appellant remained as president of the corporation until April 1976, at which time he resigned as its president and Richard G. May took over as its president. Richard G. May was also a director.

As an employee along with thirty to forty other employees of the corporation, appellant was head of

the technical end of the operation. The corporation had Ms. Carol Reid as the office manager, Mr. Blackburn in charge of training, building and maintenance, William Campbell as director of admissions and in charge of the sales representatives (hereinafter called "sales reps"), who contacted the students and explained the course to them and their parents, and thereafter, Mr. Campbell enrolled the students. Mr. Campbell's duties and responsibilities primarily were the handling of all enrollments, counseling and termination of students, advertising and the mailroom. He had full responsibility over these functions and did not consult appellant except for a change in policy. Under Mr. Campbell were the sales reps and the girls in charge of the mailroom, who took care of the students' records.

Duties of the four to five sales reps were to mail cards and letters to students who were high school seniors within a 300 to 400 mile radius, four times a year. If the students were interested in electronics, they would return the card to the sales reps, who in turn contacted the high school counselor or principal of the student to get the student's math and other grades, courses taken and attendance. If satisfactory, the sales reps contacted the students and parents, explained the program and recommended enrollment of the student.

The sales reps were paid $75.00 commission for each enrolled student and this amount was a draw against earned commissions. The sales reps received an additional $40.00 after the student was in school for four weeks, an additional $40.00 for 25 weeks, an additional $40.00 for 50 weeks and an additional $40.00 for 75 weeks. Mr. Campbell was paid an override commission of $25.00 for each enrolled student, and the same remaining commissions paid to the sales reps.

Mr. Campbell was the approving authority for the sales reps, the students' applications (first contract), financial information of the student, the Basic Education Opportunity Grant (a/k/a BEOG) and the Federally Insured Student Loan (a/k/a FISL) by a lending institution, all Federal programs of which were signed by the appellant after Mr. Campbell's approval. Mr. Campbell gave the officer manager, Ms. Carol Reid, an amount for earned commissions once a week, who in turn, issued a check for payment by using a "signature stamp" of Appellant, Jerome A. (Jerry) Knapp on the check.

Ms. Reid or Ms. McLeod opened a student file for each enrolled student, after direct approval and delivery made by Mr. Campbell, who received the students' questionnaires and determined which of the students needed housing and jobs to be given to IET's placement director, the financial information and financing of the tuition.

The student questionnaire was kept in Mr. Campbell's office until a determination was made by him as to whether the student needed housing, a job, transportation and financial aid. If the students needed tuition financing, or housing and jobs, the student questionnaire remained in a file in Mr. Campbell's office until the student was in school and settled within 30 to 60 days.

Students' files were kept in a filing cabinet in the reception room of the receptionist, who was Ms. Sheila McLeod. When she went to lunch, Ms. Reid or one of the girls in the mailroom would take over Ms. McLeod's position. The filing cabinet in the reception room was left unlocked during the day and was supposed to be locked during the night. The key to the lock in the filing cabinet was kept in Ms. Reid's desk drawer. During the day, almost anyone had access to this filing cabinet and desk drawer because Ms. Reid could not lock her desk.

In the mailroom, there were three girls who would send out from 1000 to 4000 pieces of mail each day, primarily Denise Thompson, Rhonda Blackburn and Yvonne Edwards. These girls would type envelopes for prospective students from high school senior lists within a 200 to 400 mile radius. Also, they were responsible for stuffing these typed envelopes, stamping and mailing them out each day. These mailroom girls also helped Ms. Reid and Ms. McLeod with typing and took care of student and school records at times. Ms. Yvonne Edwards was also the wife of Mr. Don Edwards, Branch Manager of Associates Financial Services of Kentucky, Inc., (a/k/a Associates), at Paducah, one of the lending institutions. Along with Mr. Campbell, the sales reps had access to the mailroom and the girls who worked there because one of their primary functions was advertising.

From 1964 to 1972, IET handled most of its tuition financing. In 1972, the branch manager of Associates at Paducah came to see appellant, for financing tuition

agreements. Thereafter, a new branch manager came into Paducah for Associates by the name of A. L. (Bud) Strup. Mr. Strup stated to appellant that Associates would do all of the bookwork and relieve the girls from a lot of strain and that Associates would collect the tuition agreements entered into by IET and Associates. Also, Mr. Strup was interested in exposure to young couples just getting married, with good jobs, cars and appliances, with the necessity to finance tuition agreements. Therefore, IET started financing tuition agreements with Associates in 1972.

IET now needed money because previous to that, IET was not involved in too many Federal programs. It was primarily a pay-as-you-go thing as the students earned their money. At this point, IET became eligible for Federally Insured Student Loans (FISL), Supplemental Opportunity Grants, National Direct Loans and Basic Education Opportunity Grants (BEOG). IET's primary problem was that it had to order books six months to one year in advance from McGraw-Hill Publishing Company, who printed these books every two years because of being technical in nature. If IET ran out of books, it would have to wait at least 6 months to get additional books if they were not ordered in advance. Another problem was the cost of lab equipment being very high with test tubes and glassware being broken periodically. Students would also burn up integrated circuits, maybe dozens of them each night. Some of them would run as high as $40.00 to $60.00 a piece. This lab equipment was not available locally and had to be ordered from the manufacturer

at Chicago or New York. Also, the instructors at IET had to be paid. When IET got into these Federal programs, it would inform the student that he was going to get a grant, a BEOG Grant, and the necessity of IET having to carry students from six to ten months before getting the first payment from the government was a factor for IET to cope with. This would cause a cash flow problem for IET and therefore IET was interested in financing tuition agreements with Associates at this point.

After IET developed problems with Associates, IET stopped doing business with Associates from 1972 until the latter part of 1973, one problem being the handling of student accounts. The whole idea was to have the student pay Associates, however, a number of students were not paying Associates and told the girls at the office of IET that they had made payments to Associates. This resulted in delinquent accounts because Associates did not follow up on the students for payment.

IET also had a Dealer Agreement with Associates in that Associates would deduct 25% of the gross amount of the contract after the finance charges were taken off and that they would maintain this amount until IET reached a contingency level of 50% of the gross outstanding contracts. This became a problem because Associates did not allow the drop-out students, or, ones who changed classes whenever they failed in an eight week period. These students were placed on probation and if the student failed for the second eight week program, the student would either have to drop

back and take that course over again, or be terminated and sent home. IET always had 20% to 30% of the students that were failing a particular part of the course and had to take it over again. IET also had students who dropped back to a later class because these students had to go home to help their fathers harvest the crops in the fall. IET had a number of students who would sign up in October, November and December of one year for the following June or July class and if there was a rainy spring and the crops were not out, these students would have to stay home and help their fathers. This would cause another transfer from June to an October class and if the students were signed up for the September class, they would have to transfer to the February class of the following year. Other students would drop out and work in a factory for a while until they decided to go back to school and re-enroll. Every time that a student would do this, they would have to be refinanced and Associates would again deduct the holdback of 25% plus the finance charge, thus ending up with some students who maybe had to drop back three times. Associates had more money in the holdbacks than IET was advanced to begin with, which was another problem.

When IET first started doing business with Associates, Associates assured IET that the 25% and 50% figure would be reduced to 10% after IET showed performance. Associates was holding up most of IET's cash flow, thus defeating the purpose of the agreement. Also, IET got into a problem with tuition where a student was seventeen and not of legal age, signed an

Associates' agreement and dropped out or got behind in his payments, but that Associates could not collect from the student or his parents because of lack of the parents' signature. If the student was a veteran, the wife's signature would be missing. Therefore, IET quit doing business with Associates at this point.

The total amount of Associates tuition agreement with IET was $3900.00 for each student. From this amount, interest was charged of $585.00, leaving a balance of $3315.00. From this amount, a holdback of 25% or $828.00 was made by Associates, leaving a balance of $2487.00 paid to IET on each contract. If there were ten contracts for a total amount of $39,-000.00, less the interest charged, ten contracts at $828.00 or $8280.00 would be the amount of the 25% holdback reserve. The purpose of the 25% holdback was to allow IET an option to pay off a contract from its bank account to Associates, or reduce the total holdback reserve by the amount of the contract, where a student did not make payment or dropped out. IET was owner of the holdback reserve, even though Associates had possession.

After an attempt to resolve the problems, IET again started doing business with Associates in 1974. Students were told to make their monthly payments to IET and IET in turn paid Associates. Also, the students did not need to sign the retail installment contracts and tuition agreements in question between IET and Associates, unless the students wanted credit life insurance. Appellee's Exhibit No. 26-B was the "Retail Installment Contract and Tuition Agreement" be-

tween IET and Associates. Mr. Vaughn Albert of Associates designed this contract with approval of Associates' Legal Department. This contract between IET and Associates had nothing to do with the student's application (first contract) accepted by IET and the student's questionnaire with IET.

Effective June 1975, IET received a new dealer number from Associates, so that when IET refinanced a student by taking him back in class, Associates would not holdback a second 25%. The interest charge would be made on the new contract not collected on the old contract. The amount that the student owed on the old contract would be charged against IET's holdback reserve account with Associates. Also, Associates informed IET that if a student would not drop out of school over six months, IET would continue making payments for the student until the student came back to school; that, after IET showed a little more performance in its tuition financing, this 25% and 50% holdback reserve would be reduced to 10%.

IET again stopped doing business with Associates in January 1976 because IET discovered that apparently there had been some refinancing of students and the balances had not been charged back by Associates to IET's holdback reserve account. Mr. Campbell of IET kept a list of the students whose contracts had to be financed, those contracts being the first contract between IET and the student and the second contract being the retail installment contract and tuition agreement in question between IET and Associates. Mr. Campbell gave appellant a stack of student question-

naires who needed to have their tuition financed. Again, the student questionnaire was prepared either by the student or by the sales rep under Mr. Campbell in the field. The student questionnaire was a mimeograph blank form kept on a shelf in the mailroom . The forms were printed later and everyone in the school (IET) had access to these forms. After Mr. Campbell delivered to appellant a stack of student questionnaires of students who needed their tuition financed, appellant would fill out in longhand the retail installment contract and tuition agreement between IET and Associates from the information contained in the student questionnaire, signed appellant's name thereon at the bottom left, without a student's signature at the bottom right of that retail contract in question and without appellant's signature on the assignment on the reverse side of that contract, at this point. The retail installment contracts and tuition agreements (subject matter of this case) were also kept, in blank, on the shelf in the mailroom near the blank student questionnaires. The mailroom had two shelves upon which all of IET's blank forms were kept. It was also used as a classroom.

After appellant filled out the retail contracts in longhand from each student's questionnaire and signed the bottom left with the student's signature at the bottom right if insurance was desired, he gave the stack of questionnaires and retail contracts to one of the girls at IET to type the "cover sheets" for the amounts of money and information contained in the retail installment contracts and tuition agreements.

One of the girls normally was Ms. Sheila McLeod, unless she was out to lunch or sick. At times, Ms. McLeod would give the typing job of the cover sheets to Ms. Carol Reid or to one of the girls in the mailroom or to the one sitting in as receptionist. After the cover sheet was typed, the stack of retail installment contracts and tuition agreements and student questionnaires and cover sheets would be returned to appellant, or have them laid upon his desk, sometimes lying there from a few hours to two or three days before the stack was given back to Mr. Campbell.

Mr. Campbell had the responsibility to call the student at home or see him in the evening at school to find out if the student wanted credit life insurance, and if the student wanted credit life insurance, the student was asked to sign on the line for credit life insurance at the bottom right of the retail installment contract and tuition agreement in question. After Mr. Campbell talked to all the students in the stack with regard to credit life insurance, he delivered the stack containing the retail installment contracts and tuition agreements and cover sheets back to appellant personally, if appellant was in his office, or leave them on appellant's desk if appellant was not in his office or lay them on Ms. Reid's desk. The student questionnaires were placed in each student's file by Mr. Campbell. At this point, there would still be no signature on the "assignment" of the retail installment contract and tuition agreement from IET to Associates.

After the stack got to appellant, appellant would normally take the stack to one of Associates' girls

behind the desk. It was either Patricia Driver Waddy or Debbie Cummings of Associates to whom appellant handed the stack for financing, during this period of time. At times, appellant would give the stack to Associates' Branch Manager, Don Edwards or Ron Henson, if they were there. Thereafter, Associates had the responsibility to call the parents of the students and the students' employers to verify these facts. For College Work Study on the student program, Associates automatically called Mr. Stubblefield of IET to verify this fact because Mr. Stubblefield was in charge of that program.

Mr. Campbell furnished appellant with a list of the students working for College Work Study and at one time, IET had over 300 students working for the City of Paducah, and most of the time, between 25 and 35 students working for the county, and other students in hospitals and non-profit organizations. Mr. Stubblefield would then get the list of students from appellant after appellant got the list of names from Mr. Campbell. Mr. Campbell did not directly call Mr. Stubblefield because appellant handled all Federally Insured programs with amounts allotted to IET. The Federally Insured program is not the subject matter of the Indictment returned in this case.

Appellant normally did not sign the "assignment" for IET contained on the reverse side of the retail installment contract and tuition agreement in question at the time of delivery of the stack to Associates. If appellant was leaving town, he would sign the assignments for IET before sending the stack (which contained the retail installment contract and tuition agreement, together with a cover sheet for each contract) to Associates to check out and discount them.

Associates did not "purchase" every retail installment contract and tuition agreement at the time of *delivery* by appellant or by someone from IET. It would take Associates from three, four or five hours to a week, normally one or two days, to verify the stack as to the name of the student, his parents' telephone number if he was under 18 years of age and the student's place of employment. Associates did not require the social security number of the student because it was not material, according to Associates.

After Associates verified and checked out the stack, it would either give appellant a telephone call to come and pick up the check, or, Associates would bring the check over to IET, or that IET would send for the check if appellant was tied up. On a number of occasions, Don Edwards of Associates would bring the check to IET or to appellant's office on his way to lunch. After acceptance of the check by appellant or his designee for IET, if he was in town, appellant would sign the "assignment" on the reverse side of the retail installment contract and tuition agreement for IET. Associates looked to IET for payment and not to the student. The check would be delivered by appellant to the office manager of IET, Ms. Carol Reid, who would deposit it into the IET bank account.

In each of the sixteen (16) counts of which appellant was convicted and given a five (5) year sentence on each count for a total of eighty (80) years in prison,

(later cut down to a maximum of twenty (20) years), the check was made out to either the Institute of Electronic Technology (IET) or, Electronic Sales Engineers, Inc. (ESE), the corporation, and Ms. Reid or her designee would stamp "For Deposit Only" on the backside of the check and deposit it into the corporate bank account at the Paducah Bank and Trust Company. The receipt book for the amount of the check would be receipted normally by Ms. Sheila McLeod and at times by Ms. Carol Reid. The receipt book was normally kept in Ms. McLeod's desk and the deposit stamp was normally kept in Ms. Reid's desk. Both desks were unlocked. The checks from Associates were never made payable to appellant personally.

Appellant and Richard G. May were the only ones having the authority to sign checks for IET because they had their names on the signature card at the bank. Appellant and Mr. May had a "signature stamp" used to cash IET checks. These signature stamps were stamped on a separate card at the bank, with the handwriting of appellant and Mr. May, and those signature stamps were kept in Ms. Carol Reid's desk, again unlocked.

Since 1972, Associates never made a check payable to the appellant personally, or to anyone else at the school. Further, Associates never made a check personally payable to appellant involving the sixteen (16) counts in this case. All of the checks were made payable to IET or ESE.

Appellee's Exhibit No. 3-B and No. 34-B did not have appellant's signature on the "assignment" on the

reverse side of the retail installment contract and tuition agreement, but Associates issued its checks for those contracts. Appellant did not deliver those particular contracts to Associates, and IET or appellant have no idea as to who delivered those exhibits to Associates.

Appellant had "no knowledge" as to who placed the students' signatures on all of the exhibits, being the subject matter of the Indictment, or when they were placed thereon. Furthermore, appellant personally did not place the students' signatures on the contracts or have any knowledge as to when or who placed the students' signatures on the contracts for credit life insurance.

Appellant did not, during the period covered by the Indictment, intentionally defraud or injure, or attempt to defraud, deceive or injure anyone by discounting retail installment contracts and tuition agreements for IET with Associates.

Furthermore, appellant did not have the *"knowledge"* that the contracts in question were "forged" before or at the time of discounting the same.

Under Rule 23(1)(f) of Rules of the U. S. Supreme Court, if a judgment of a state court is sought, the statement must contain (a) the stage of proceedings in the trial and appellate courts that the Federal questions to be reviewed were raised; (b) method of raising; (c) decision of said courts; (d) specific reference to record where matter appears, in order to give the U. S. Supreme Court jurisdiction.

1. Motion to Suppress Evidence and/or Dismiss Indictment filed 9/2/76 and Second Supplemental Motion to Suppress Evidence and/or Dismiss Indictment filed 9/17/76 passed by trial court at pre-trial hearing of 9/27/76, pp. 36 thru 38, 41 and pre-trial hearing of 2/3/77, Vol. II, p. 200.

2.(A) Third Supplemental Motion to Suppress Evidence and/or Dismiss Indictment filed 9/21/76 pertaining to violation of defendant's rights under the 4th, 5th, 6th and 14th Amendments of the U. S. Constitution, overruled only as to dismissal of indictment by trial court at pre-trial hearing of 9/27/76, p. 42 and pp. 115 thru 117.

2.(B) *Probable Cause:* Defendant arrested 4/9/76, however informer went to prosecutor's office on 4/13/76 to swear out a warrant against defendant, therefore, no probable cause as of 4/9/76. See pre-trial hearing of February 3, 1977, Vol. I, p. 47.

3. Third Supplemental Motion to Suppress Evidence and/or Dismiss Indictment filed 9/21/76 pertaining to violation of Federal Reserve Board Regulation "Z" (12 CFR Section 226, Title 12, Chap. II, Part 226 and Title I, Truth and Lending Act and Title V, General Provisions, Credit Protection Act, Public Law 90-321, 82 Stat et seq., eff. 7/1/69 and 15 USC Sec. 1601-1691), overruled by trial court on 9/27/76 appear in pre-trial hearing of 9/27/76, pp. 73 thru 76, and the contracts in question lacking legal efficacy, which appears in pre-trial hearing of 9/27/76, pp. 85 thru 88.

4. Third Supplemental Motion to Suppress Evidence and/or Dismiss Indictment filed 9/21/76 pertaining to the unlawful search and seizure of evidence, without a search warrant, illegal arrest on 4/9/76, in violation of the 4th Amendment of U. S. Constitution, Section 10 of the Constitution of the Commonwealth of Kentucky, overruled by trial court which appear at pre-trial hearing of 9/27/76, pp. 90 thru 119, and pre-trial hearing of 1/24/77, p. 107.

5. Second Search Warrant not filed until after the pre-trial hearing of 9/27/76, as stated by the prosecution that he needs to file this search warrant, appear at pre-trial hearings on 9/27/76, p. 63, and pp. 90 thru 95, pp. 108 thru 119. Also see pre-trial hearing of 1/24/77, p. 95.

6. Third Supplemental Motion to Suppress Evidence and/or Dismiss Indictment filed 9/21/76 pertaining to the search and seizure of evidence which went beyond scope of the affidavit for search warrant, overruled by trial court on 9/27/76, appears at pre-trial hearing of 9/27/76, pp. 97 thru 98, 118 and return of property found, which appears in pre-trial hearing of 9/27/76, pp. 105 thru 110.

7. Consolidated Motion for Suppression of Evidence and/or Dismissal of Indictment filed 12/8/76 pertaining to:

A. Unlawful search and seizure of evidence violated defendant's rights under the 4th, 5th, 6th and 14th Amendments of the U. S. Constitution and Section 10 of the Kentucky Constitution.

B. Unlawful search and seizure constituted an absolute invasion of defendant's rights of privacy and exceeded the legal permissible limits.

C. The evidence unlawfully seized was not in plain view of the arresting officers.

D. Unlawful search and seizure was not made pursuant to defendant's consent, therefore, defendant did not waive his rights.

E. Police officers arrested defendant on 4/9/76, the unlawful search and seizure on 4/14/76, the indictment returned on 4/16/76, therefore, the search was not made incidental to a lawful arrest.

F. No probable cause for the search.

G. At no time did defendant have any weapon or something of similar nature to do grievous bodily harm to anyone.

H. Affidavit for search warrant, Court's Exhibit #1, executed on 4/14/76.

I. First search warrant, Court's Exhibit #3, not executed.

J. Second search warrant, Court's Exhibit #4, executed on 4/14/76.

K. No return of property found on second search warrant of evidence illegally searched and seized, Court's Exhibit #2.

L. Whereabouts of the second search warrant, Court's Exhibit #4, from 4/14/76 to 9/27/76, when it was presented to the trial court.

M. Contracts in question being between IET and Associates and not between Associates and students, therefore, no forgery.

N. Title 5 USC 552a, subsection 7 of Student Privacy Act violated prior to indictment returned on 4/16/76.

O. Violation of KRS 360.260 which states that state law requiring disclosure of items of information must be substantially similar to applicable Federal law.

P. Violation of Federal Reserve Board Regulation "Z" of 12 CFR Section 226, Title 12, Chapter II, Part 226, Title I, Truth and Lending Act, and Title V, General Provisions, Consumer Credit Protection Act, and Public Law 90-321; 82 Stat. 146 et seq., eff. 7/1/69.

Q. Violation of 15 USC 1601-1691.

R. Search warrant is null and void.

S. Affidavit for Search Warrant is defective among other grounds, exhibits were not attached thereto.

—Said consolidated motions to Suppress Evidence and/or Dismiss Indictment filed heretofore on 9/2/76 9/17/76, 9/21/76, 12/8/76 and 1/26/77 appear at pretrial hearing of 2/3/77, pp. 187 thru 188, 197, all motions overruled by trial court on 2/3/77 in Vol. II at p. 210, with defendant's objections to that ruling, stating that the Motion to Suppress was based upon violation of defendant's rights under the 4th, 5th, 6th and 14th Amendments of the U. S. Constitution, a copy of which is in Appendix, *infra*.

8.(A) First search warrant and second search warrant are not identical documents, which appear in pretrial hearing of 1/24/77, pp. 7 thru 108; pre-trial

hearing of 2/3/77, Vol. I, pp. 3 thru 110, and in Vol. II, pp. 111 thru 153.

8.(B) Motion and Supplemental Motion for Discovery and Inspection filed 9/2/76 and 9/21/76 respectively, overruled by trial court in pre-trial hearing of 2/3/77, Vol. II, pp. 176 thru 177.

8.(C) Defense motions filed after arraignment on 4/22/76 were within discretion of the trial court granted to defendant on 4/22/76.

9. Motion for Return of Certain Records pertaining to tax records of corporation for fiscal year 4/1/75 to 3/31/76 filed 9/21/76 overruled by trial court at pre-trial hearing of 9/27/76, pp. 41 thru 42, and pre-trial hearing of 2/3/77, Vol. II, pp. 184 thru 187, partly sustained by trial court on p. 187.

10. Motion to Suppress overruled by Division II of trial court on 4/28/77, copy of which is in Appendix, *infra*.

11. No knowledge and no intent, which are part of the elements of the crime are discussed at pre-trial hearing of 2/3/77, Vol. II, pp. 204 thru 210, and pre-trial hearing of 8/30/77, pp. 2 thru 9.

12. Second Supplemental Motion to Suppress Evidence and/or Dismiss Indictment filed 9/17/76 pertaining to unlawfully seized evidence in violation of Title 5 U. S. Code, Section 552a, et seq., overruled by trial court on 9/27/76 which appears in pre-trial hearing of 9/27/76, pp. 67 thru 73.

13. Motion for Discovery and Inspection pertaining to third drawer of filing cabinet in prosecutor's office filed 9/21/76, granted by trial court at pre-trial

hearing of 2/3/77, Vol. II, pp. 178 thru 184 missing from prosecutor's office after a Motion to Produce and Disclose was filed, and pre-trial hearing of 4/28/77, pp. 5 thru 11, and pre-trial hearing of 5/3/77, pp. 5 thru 7.

14. Motion to Suppress Evidence and/or Dismiss Indictment filed 9/2/76 pertaining to violation of Kentucky Revised Statute 360.260 stating disclosure of evidence to state must meet Federal requirements, denied by trial court on 9/27/76 which appears at pre-trial hearing of 9/27/76, pp. 69 thru 71.

15. Second Supplemental Motion to Suppress Evidence and/or Dismiss Indictment filed 9/17/76 pertaining to the contracts in question are between IET and Associates and not between Associates and the students appear in pre-trial hearing of 9/27/76, pp. 82 thru 84, delaying a ruling by the trial court until such time as said contracts are introduced as evidence during trial.

16. Forgery—Did defendant forge them or not, could have been answered by James Dibowski, Cincinnati, Ohio, retired from Federal Government, expert witness not permitted to testify at trial. (See T. of T., Vol. I, pp. 6 thru 23, 26 thru 34 and Vol. II, pp. 215 thru 222.)

17. Notice and Petition for Change in Venue filed 8/22/77, overruled by trial court on 8/31/77 at pre-trial hearing of 8/31/77, pp. 4 thru 73.

18. Elements of the crime under KRS 516.060. (See pre-trial hearing of 8/31/77, pp. 86, 94.)

19. Motion to Suppress filed 8/22/77 and 8/26/77, respectively, pertaining to voluntary disclosures and re-disclosures to third parties, at pre-trial hearing of 8/31/77, pp. 96 thru 108, pp. 110 thru 113, pp. 121 thru 125, overruled by trial court.

20. Motion for Directed Verdict filed 10/4/77 overruled by trial court pertaining to failure of prosecution to prove elements of the crime. (See T. of T., Vol. XIV, pp. 1991 thru 2004, 432 thru 435 and Vol. XVI, p. 2212, a copy in Appendix, *infra.*)

Trial court's Instructions at T. of T., Vol. XVI, pp. 2206 thru 2215, also T. of T., Vol. XIV, pp. 1987 thru 1988; Vol. IV, p. 526; Vol. III, p. 342, a copy in Appendix, *infra.*

22. Motion for New Trial filed 10/11/77 denied by trial court, self-explanatory, a copy in Appendix, *infra.*

23. Supreme Court of Kentucky Memorandum Opinion Per Curiam Affirming, entered 6/12/79, a copy in Appendix, *infra.*

24. Petition for Rehearing, Modification or Extension filed with Supreme Court of Kentucky on 6/27/79, a copy in Appendix, *infra.*

25. Denial of Appellant's Petition for Rehearing, Modification or Extension and Mandate of Supreme Court of Kentucky dated 7/24/79, a copy in Appendix, *infra.*

26. Application for Stay, filed 8/19/79 granted by the Supreme Court of Kentucky on 8/23/79 staying execution and enforcement of the mandate to and including 11/21/79 within which time for appellant to file his petition for writ of certiorari to the Supreme Court of the United States, a copy in Appendix, *infra.*

ARGUMENT

Reasons for Granting the Writ

McCracken Circuit Court of Paducah, Kentucky convicted appellant, Jerome A. (Jerry) Knapp, on October 6, 1977, which conviction was appealed to the Supreme Court of Kentucky, Frankfort, Kentucky, affirming the trial court on Federal questions of substance not in accord with the applicable decisions of the Supreme Court of the United States.

Appellant was illegally arrested on Friday, 4/9/76 without an arrest warrant or any probable cause and confined in the McCracken County Jail until Monday, 4/12/76. An arrest warrant for appellant was executed by the Judge of the McCracken Quarterly Court on 4/12/76 based upon a 25 count complaint executed by the Assistant Commonwealth Attorney on 4/12/76. On 4/14/76 the search and seizure of a truckload of evidence was made by the Sheriff of McCracken County, Kentucky and subsequently, Indictment No. 11922 was returned by the Grand Jury on 4/16/76.

As of 4/9/76, there was an illegal arrest of appellant without any probable cause, therefore, the search and seizure was not incidental to a lawful arrest. Copies of the 25 count complaint, arrest warrant, confinement and release of appellant are in the Appendix, *infra.*

Rights of a person who is the subject of a criminal investigation are based legally upon the 4th Amendment prohibition against unreasonable searches and seizures, the 5th Amendment right to be free from com-

pelled self-incrimination, and the 6th Amendment right to counsel. These rights are enforced by the exclusionary rule which requires that evidence obtained as a result of a violation of these rights not be admitted at trial. An arrest is a detention of the person for purposes of subjecting him to criminal prosecution. No warrant is required even if an opportunity to obtain one exists. But an arrest is reasonable only if there was "probable cause" to believe that a crime had been committed and the person had committed it. Courts have indicated a preference for warrant arrests, and suggested that in a close case, in which the existence of probable cause was at issue, it would find probable cause if the arrest was made with a warrant but not if a warrantless arrest was involved. Under the Kentucky Rules of Criminal Procedure the complaint is made before officers who are empowered to issue warrants and serve as a substitute for an affidavit. Therefore, it becomes the charging instrument and provides a record and written evidence of a formal charge. The warrant, on the other hand, is an arresting instrument. It is necessary that a written complaint be submitted before the magistrate issues a warrant in either a misdemeanor or felony cases. (See Appendix RCr 2.02, OAG 62-550.)

Under Criminal Rule 2.04, if from an examination of the complaint it appears to the magistrate that there is probable cause to believe that an offense has been committed and that the defendant committed it, he shall issue a warrant for the arrest of the defendant.

Under RCr 2.10 a warrant of arrest may be executed by any peace officer and he need not have the warrant in his possession at the time of arrest, but in that event he shall inform the defendant of the offense charged and the fact that a warrant has been issued, and upon request show the warrant or a copy of it, to the defendant as soon as possible. Under RCr 3.18, if the defendant is committed to jail, the magistrate shall make out a written order of confinement, signed by him, which shall be delivered to the jailer by the peace officer who executes the order of commitment.

Under KRS 431.005 a peace officer may make an arrest in obedience to a warrant or without a warrant when a felony or misdemeanor is committed in his presence or when he has reasonable grounds to believe that the person being arrested has committed a felony.

The 4th Amendment of the U. S. Supreme Court and Article 10 of the Commonwealth of Kentucky prohibit unreasonable seizures of the person. Such a prohibition is at the heart of requirements for a lawful arrest. The constitutional provisions prohibiting unreasonable searches limit the doctrine of search incident to arrest.

It is almost always assured that if an arrest is illegal for any reason, whether a violation of state law or the 4th Amendment, a search incident to such an arrest is unreasonable under the 4th Amendment. Phrased another way, an illegal arrest can never be considered as making a search reasonable under the 4th Amendment even if the illegality of the arrest was not itself a violation of the Federal Constitution.

Of course, if an arrest is unreasonable under the 4th Amendment, for want of probable cause or (if ever required by the 4th Amendment) for want of a warrant, then the search incident to the constitutionally violative arrest is unreasonable under the 4th Amendment. To comport with the 4th Amendment, an arrest warrant must be supported by probable cause. *Go-Bart Importing Co.* v. *United States,* 282 U. S. 344, 75 L. Ed. 2d 374 (1931); *Giordenello* v. *United States,* 357 U. S. 480, 2 L. Ed. 2d 1503 (1958); *Whitely* v. *Warden,* 401 U. S. 560, 28 L. Ed. 2d 306 (1971).

Defendant's 3rd Motion to Suppress states as follows:

> "1. That, the Commonwealth Attorney's office and the Sheriff of McCracken County unlawfully searched and seized the evidence in this case, without a lawful search warrant, all in violation of the 4th Amendment of the Constitution of the United States and the Constitution of the Commonwealth of Kentucky.
>
> 2. That, the Commonwealth Attorney's office and the Sheriff of McCracken County performed certain acts which violated defendant's rights under the 4th, 5th, 6th and 14th Amendments of the Constitution of the United States and the Constitution of the Commonwealth of Kentucky.
>
> DATED on this 21st day of September, 1976."

(See Transcript of Hearing dated April 28, 1977, p. 7. Also see T. of T., Vol. VI, p. 836.)

In the case of *Chimel* v. *California,* 395 U. S. 752, 23 L. Ed. 2d 685, 89 S. Ct. 2034 (1969) the United

States Supreme Court held on page 768 that application of sound Fourth Amendment principles to the facts of this case produces a clear result. The search here went far beyond the petitioner's person and area from within which he might have obtained either a weapon or something that could have been used as evidence against him. There was no constitutional justification, in the absence of a search warrant, for extending the search beyond that area. The Scope of the search was, therefore, "unreasonable" under the Fourth and Fourteenth Amendments, and the petitioner's conviction cannot stand.

Therefore, as a general proposition, a search conducted after an arrest whether the arrest is pursuant to an arrest warrant or without a warrant but based upon reasonable grounds or probable cause, the arresting officer must confine the search to the arrestee's person and the area from which the arrestee may obtain either a weapon or something that could be used as evidence against the arrestee.

The Fourth Amendment to the United States Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Section 10 of the Constitution of Kentucky stipulates:

"The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizure; and no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation." (See *Frank L. Rakas and Lonnie L. King, Petitioners* v. *State of Illinois,* 435 U. S. 922, 58 L. Ed. 2d 387, 98 S. Ct. ——, Argued October 3, 1978. Decided December 5, 1978.)

Court's Exhibit No. 1 is the "Affidavit for Search Warrant", which was signed by the Commonwealth Attorney on April 14, 1976, subscribed and sworn to before Raymond C. Schultz, Judge, McCracken County Quarterly Court, a copy of which appears in the Appendix, *infra.* Court's Exhibit No. 2 is the "Return of Property Found" written on a separate sheet of paper with a list of the property found but without a signature of an officer making the search or seizure, a copy of which appears in the Appendix, *infra.* Court's Exhibit No. 3 is a "Search Warrant" unsigned by anyone, a copy of which appears in the Appendix, *infra.* Court's Exhibit No. 4 is a "Search Warrant" signed by Raymond C. Schultz on April 14, 1976 at 10:07 A.M. o'clock, a copy of which appears in the Appendix, *infra.* Court's Exhibit No. 5 is a "Search Warrant", a copy of Court's Exhibit No. 3, which appears in the Appendix, *infra.*

Court's Exhibit No. 3 cannot be one and the same document as Court's Exhibit No. 4 because the letter "S" in the words search warrant begins under the letter "K" in the words McCracken County Quarterly

Court in Court's Exhibit No. 4 signed by the County Judge, and the letter "S" in the words search warrant begins under the letter "N" in the words McCracken County Quarterly Court in Court's Exhibit No. 3, in blank with no signature thereon. Court Exhibit No. 5 is a photo copy of Court's Exhibit No. 3 which is in blank and unsigned. (See Transcript of Proceedings of Feb. 3, 1977, Vol. I, pp. 3 thru 39.)

This, in essence, means that the prosecution did not obtain all of the evidence in this case under a valid search warrant and the affidavit for search warrant was too broad and indefinite, therefore defective. In fact, there was no search warrant in existence until the Commonwealth's Attorney came back from vacation on Sunday, September 26, 1976, one day before the hearing on September 27, 1976, and turned up with a search warrant to back up the sheriff's search and seizure. The Commonwealth's Attorney stated that a search warrant was in a basket on top of the sheriff's desk since April 14, 1976 (date of the affidavit), but without the sheriff's knowledge. The sheriff did not know where the search warrant was, however, he made a search and seizure of the corporate records and defendant's records, as an individual, on April 14, 1976. (See Transcript of Proceedings on Feb. 3, 1977, Vol. II, pp. 128 thru 146 and Transcript of Proceedings on January 24, 1977, p. 58 and Transcript of Proceedings on September 27, 1976, pp. 99 thru 100.)

Furthermore, the sheriff went into the corporation's offices, searched and seized corporate and individual records without the defendant or an officer of the

corporation being present. The return of property found was not signed by an officer at the time of making the search and seizure of the foregoing records. (See Transcript of Hearing dated September 27, 1976, p. 98 and Transcript of Hearing dated September 27, 1976, p. 102.)

John Bays, detective in the Commonwealth Attorney's office, had never seen a search warrant in this case. (See Transcript of Proceedings, Vol. II, pp. 149 thru 153.)

In fact, Wallace Adams, a deputy in the sheriff's office, did not sign the separate yellow sheet containing the return for property found until after the search and seizure of the individual and corporate records were made, by direction of the judge in open court. (See Transcript of Hearing of September 27, 1976, p. 114.)

Further, the affidavit upon which the search warrant was issued was too broad and indefinite, therefore defective, in that the sheriff seized a truck full of items from IET located at 1301 Broadway, Paducah, Kentucky material to the issues in this case. In the affidavit signed by Commonwealth Attorney, he stated:

> "Robert Joseph Grant stated to affiant he was on the said premises of the said IET on January 30, 1976 and saw some copies of student tuition agreements, cancelled checks, bank deposit lists, school student lists, and attendance records of said IET. That affiant makes this affidavit for the purpose of having a search warrant issued by the Court to the Sheriff of McCracken County, Kentucky to search for and seize said items mentioned above." (See

> Transcript of Proceedings dated February 3, 1977, pp. 48 thru 49, but typewritten as February 3, 1976 in error.)

During defendant's argument, defendant stated that the above statements made on April 13, 1976 by Grant were statements made to the Commonwealth Attorney, however, contrary to the above, defendant states as follows:

> "But nowhere does the affiant or his witness establish that the affiant has reasonable probable cause to believe that grounds exist for the issuance of a search warrant, that the property seized be brought before the court and retained subject to the order of the court, that the affidavit was too broad and too indefinite and on page 54 of the transcript of the hearing here on September 27, 1976, the Commonwealth Attorney himself testified that these records have absolutely nothing to do with this case. I'll turn to that page and read you exactly what he said and yet he makes the basis for his affidavit strictly on those grounds. Page 54 states: what does government loans and copies of government loans given to the school have to do with forgeries? What do cancelled checks of the school have to do with forgeries? What do the college work study payroll books where they pay students have to do with the books? What do the payroll books as to the—* * * What does that have to do as to whether or not—and the funds—to the forgeries? Then he goes on to say, if he says somebody else forged them, that can be his defense." (See Transcript of Hearing, Vol. I on February 3, 1977, pp. 90 thru 91, typewritten February 3, 1976 in error.)

This means, in essence, that there was no probable cause stated in the affidavit because the Commonwealth Attorney later admitted that the records seized from IET and defendant were immaterial to the issues in this case. This makes the search warrant, if there was one in existence, invalid and in violation of the 4th, 5th, 6th and 14th Amendments of the Constitution of the United States and Section 10 of the Constitution of the Commonwealth of Kentucky.

Substantial errors were made in the Court's instructions which misled and confused the jury as to the guilt or innocence of defendant and the amount of punishment defendant received by the jury, in violation of his rights under the 8th Amendment. The jury misunderstood the Trial Court's instructions which were as follows:

> "If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year and nor more than 5 years, in your discretion."

Whereas, the Trial Court should have instructed:

> "If you find the defendant guilty under this count * * *."

This, in effect, would not have misled and confused the jury to think that the sentence was from 1 to 5 years for the whole instruction rather than 1 to 5 years for each count. This confusion by the jury would not have resulted in an 80 year sentence in this case (T. of T., Vol. XVI, pp. 2213 thru 2215).

At defendant's hearing on October 6, 1977, defendant submitted proposed instructions taken from Stanley's Instructions and the Federal Instructions, which were denied by the Court. (See T. of T., Vol. XVI, pp. 2209 thru 2213.)

Further, substantial error was made in the Trial Court's instructions because there was no conformity of the instructions to KRS 516.060, which is the statute allegedly violated in the indictment. Conformity was not made between the instructions, the statute and the indictment. The instructions should have followed substantially the language in the indictment however, in this case, language in the instructions had no facsimile or similarity to the language in the indictment. In support of that proposition, we cite the following cases. *Hunter* v. *Comm. of Ky.*, 239 S. W. 2d 993 (1951); *Maddox* v. *Comm. of Ky.*, 349 S. W. 2d 686 (1961); *Beets* v. *Comm. of Ky.*, 437 S. W. 2d 496 (1969) and *Strong* v. *Comm. of Ky.*, 507 S. W. 2d 691, 694 (1974).

The indictment in this case read:

> "On or about ——— day of ————————, 19——, in McCracken County, Kentucky the above named defendant committed second degree criminal possession of a forged instrument, by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail contract and tuition agreement bearing the forged signature of ———————— and obtained therefrom said employee the sum of ———————— dollars, against the peace and dignity of the Commonwealth."

The Trial Court's instructions confused and misled the jury to believe that defendant was guilty, if Associates verified each contract contained in the indictment and if defendant had the contracts in his possession without the intent to defraud, deceive or injure Associates or some other person or persons. In other words, the Trial Court's instructions went beyond the language contained in the indctment and the statute.

Substantial error was made by the Court's instructions because there was no conformity of the instructions to the elements of the crime in this case, which again was prejudicial to defendant. The instructions should have been related and confined to the elements of the crime and evidence of the prosecution to prove the same. Instead of proving the elements of the crime under KRS 516.060, the prosecution based its case on the amount of money involved in 467 contracts discounted for $1,084,000.00 between IET and Associates over a 4 year period, all of which were not an element in the indictment or the statute. This evidence was wholly and totally inadmissible and prejudicial to the substantial rights of the defendant. The door was opened by the prosecution in his opening and closing statement, which placed the defendant in jeopardy before the jury in the position defendant had to rebut.

Substantial error was made in the Trial Court's instructions because the jury should not have been instructed upon a theory of the case not sustained by the evidence, or upon a theory opposed to the evidence. In this connection, there was no evidence introduced throughout trial of this case to prove that defendant

had "knowledge" of a forged instrument, nor was there any proof or even a scintilla of evidence that defendant forged the 16 contracts in question, or that, defendant knew who forged the contracts being the subject matter of the indictment.

The prosecution based its whole case on Associates loss of $515,000.00 allegedly sustained and allegedly resulting from the gross business of $1,084,000.00 over a 4 year period.

Defendant's value of IET stock of $300,000.00, which Associates own witness claimed was left off the corporate balance sheet as a part of the scheme was immaterial. This kind of testimony should not have been admitted into evidence because the personal holdings of defendant would not have been placed on the corporate balance sheet at all. The jury was more interested about where the money went and not whether defendant committed the crime. The prosecution further based its case upon a payoff proposed agreement never executed by IET or Associates, in order to settle a controversy between them, reflecting amounts accrued over a 4 year period.

Associates own witnesses admitted that they had no knowledge as to where the figures on the proposed contract came from. One witness gave 3 inconsistent statements as to where the figures came from. Yet, the prosecution used this inadmissible evidence to persuade the jury to convict the defendant on the 16 counts of a 41 count Indictment. Thus, the jury should not have been instructed on a theory of the case not sustained by the evidence, or upon a theory opposed to the evidence.

In support of this proposition, we cite the following cases, *Couch* v. *Comm. of Ky.,* 479 S. W. 2d 636 (1972) and *Crum* v. *Comm. of Ky.,* 144 S. W. 2d 1047 (1940).

Where defendant denied having "knowledge" of a forged instrument with the intent to defraud, deceive or injure another, the Trial Court's instructions should have been confined to those issues. However, in this case, the prosecution introduced evidence on all 41 counts of the indictment and the jury heard this evidence, saw it on the blackboard, and during recess, the jury went to the blackboard and compared figures and statements with one another. Thereafter, the prosecution dismissed 25 counts of the indictment on its own motion, giving its reasons to the Court and jury that it was in the interest of saving trial time which of course, resulted in implying to the jury that the prosecution had proven its 16 counts of other wrongdoing by the defendant. This was highly prejudicial to the substantial rights of defendant.

In this regard, the Trial Court should have given a "cautionary instruction" stating to the jury that it was improper for the prosecutor to state that he was dismissing the 25 counts simply to save time, thereby implying to the jury that it had evidence of other wrongdoing. This was substantial error and wholly prejudicial to defendant. See *U. S.* v. *Somers,* 496 Fed. 2d 723, 3rd Cir. (1974), certiorari denied 419 U. S. 832.

Substantial error was made in the Trial Court's instructions because of the misleading and confusing definition of "reasonable doubt", which the Trial Court applied to the case as a "whole", instead of restricting

it to each count. Therefore, the jury misunderstood the Trial Court's instructions and was confused by the implications derived from the wording in the instructions.

The Trial Court gave an instruction on reasonable doubt, as follows:

> "If upon the whole case you have a reasonable doubt as to the defendant's guilt * * *"

whereas the trial court's instructions should have been a reasonable doubt to each count before finding the defendant guilty. For this proposition we cite *Fitzpatrick* v. *Comm. of Ky.,* 53 S. W. 2d 221.

Furthermore, the trial court failed to charge the jury with an instruction:

> "The fact you may find the accused guilty or innocent as to one of the counts charged, should not control your verdict as to any of the other counts charged"

which, of course, the omission again misled the jury to believe that the maximum sentence on all of the counts was 5 years instead of actually being 80 years. Therefore, the first instruction should have been " * * * * count 1 through count 16" instead of the "whole case". This omission was highly prejudicial to the substantial rights of the defendant.

Now, there is nothing in the Trial Court's instructions 1 through 16 inclusive, which say anything about "knowledge", "intent", and "uttering or possession" by defendant. In fact, all that the Court's instructions

1 through 16 stated was that defendant "knew", instead of defendant having knowledge that _____ had not signed the signature on the retail contract. There is nothing in the statute that says anything about authorizations. The statute states that defendant had knowledge of a forged instrument and to defendant, the word authorization was misleading.

The third element of the statute is not even mentioned in the Trial Court's instructions Nos. 1 through 16, i.e., the uttering or possession of a forged instrument specified in KRS 516.030. (See T. of T., Vol. XVI, pp. 2210 thru 2211.)

The Trial Court moreover instructed the jury under instruction No. 17:

> "If you believe from the evidence beyond a reasonable doubt that the defendant is guilty under any of the preceding instructions, but that he performed or caused to be performed such acts in the name of or in behalf of the corporation, then he shall be deemed to be guilty the same extent as if such acts were performed in his own name or in his own behalf."

There again, the Trial Court's instructions went beyond the language in the indictment and the language in the statute. The instruction should have been limited to the "preceding counts" instead of the "preceding instructions". This again was highly prejudicial to the substantial rights of defendant.

The Trial Court stated:

> "* * * I have proposed number 17 in here. * * * I want to hear about it. I do have some reservations on it, Mark, and I will tell you why. I don't know whether anybody has ever found if that was used as an instruction before. I don't like to plow new ground without having some authority to do it, and yet on the other hand, I think that it is applicable in this case. That is my only observation at this point. So, whatever you all have to say in regard to that, let's go ahead and say it and get it on record * * * object to any of the Court's instructions which are inconsistent with those you have offered." (See T. of T., Vol. XVI, p. 2206.)

Instruction No. 17 is improper because it does not coincide with the allegations set out in the indictment. The indictment specifically states that the defendant uttered a forged instrument to Associates, and obtained thereby from said employee the sum of $2486.25. Defendant does not think that the jurors are going to be able to understand the correlation between Instruction No. 17 and the allegations in the indictment which will confuse them. (See T. of T., Vol. XVI, p 2207.)

Defendant suggested how Instruction No. 18 may be modified and the Trial Court placed something in the record on that. Defendant modified Instruction No. 18 by the following:

> "If upon the whole case, you have a reasonable doubt as to defendant's guilt, you shall find him not guilty. The term 'reasonable doubt' as used in these instructions means a substantial doubt, a real doubt, in that you must ask yourself, after hearing all of the evidence, that your mind is left in such condition that you cannot say that you have an abiding conviction to a moral certainty of the defendant's guilt."

Defendant suggested to the Trial Court that the words " * * * not whether a better case might have been proved * * * " be eliminated from that instruction, and the words " * * * you actually doubt that the defendant is guilty * * * " should likewise be eliminated from that Instruction No. 18. (See T. of T., Vol. XVI, pp. 2208 thru 2209.)

The defendant could not have a fair and impartial trial in McCracken County, Kentucky, because of the publicity and on account of the state of the public mind at that time in McCracken County, Kentucky. Defendant appended several news articles to defendant's petition since the indictment which appeared in the Paducah Sun Democrat, the only newspaper of general circulation within this community, which were false, inaccurate, over-exaggerated, detrimental and prejudicial to the substantial rights of the defendant and which defendant did not know and had no means of determining the specific source of the news stories about him. Such news articles appearing in the Paducah Sun Democrat were not only false, but that the newspaper had made other derogatory references to the defendant, which influenced the general public in this community to believe that the defendant was guilty before trial.

It would have been impossible for the defendant to impanel a jury of twelve (12) persons in McCracken County, Kentucky who would not have a pre-determined notion of defendant's guilt of the crime so charged.

Section 11 of the Bill of Rights of the Constitution of the State of Kentucky states that, in all criminal

prosecutions, the accused has the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor. Defendant cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land; and in prosecutions by indictment or information, he shall have a speedy public trial by an impartial jury of the vicinage; but the general assembly may provide by a general law for a change of venue in such prosecutions for both the defendant and the Commonwealth, the change to be made to the most convenient county in which a fair trial can be obtained.

The Petition, together with three of the affidavits and a copy of the newspaper clippings which satisfied KRS 452.210 were filed on August 22, 1977 and denied by the Court by its order in the Transcript of Hearing dated August 31, 1977. (See Transcript of Evidence dated August 31, 1977, pp. 72 thru 73.)

The prosecution placed several witnesses on the stand who were not a cross-section of the community in McCracken County, Kentucky. The witnesses for the prosecution represented business interests of the community. (See Transcript of Hearing dated August 31, 1977, pp. 4 thru 66.)

The prosecution did not return from its office the general ledger, the general journal, the payroll book, check stubs, cancelled checks, bank deposit slips and the receipt book for the period beginning April 1, 1975 and

ending March 31, 1976 in order that Federal and State income tax returns could be filed for that period, that, an extension of time to filed such returns was obtained from the Internal Revenue Service until October 15, 1976, that, necessary postings for that taxable year would involve at least 2 to 3 weeks work by a bookkeeper before a trial balance could be made for preparation of a tax return, however, the prosecution chose not to obey the Court order. (See RCr 7.24 Kentucky Rules of Criminal Procedure. Also see Transcript of Proceedings dated September 27, 1976, pp. 6 thru 17.)

In the "Consolidated Motion for Suppression of Evidence" filed on December 8, 1976, Defendant states as follows:

(1) That, an unlawful search and seizure of the evidence used against the defendant in a criminal proceeding and all evidence directly or indirectly obtained therefrom, were in direct violation of defendant's rights under the 4th, 5th, 6th and 14th Amendment of the Constitution of the United States and Section 10 of the Constitution of the Commonwealth of Kentucky and/or any pertinent rule, case law or statute promulgated thereunder.

(2) That, the unlawful search and seizure constituted an absolute invasion of defendant's right of privacy and exceeded the legal permissible limits.

(3) The evidence so unlawfully seized was not in plain view of the officers.

(4) The unlawful search and seizure was not made pursuant to defendant's consent, therefore, defendant did not waive his rights.

(5) The officers arrested defendant on April 9, 1976, made the unlawful search and seizure on April 14, 1976, but the indictment was returned by McCracken County Grand Jury on April 16, 1976, therefore, the search was not made incidental to a lawful arrest.

(6) That, there was no probable cause for the search.

(7) At no time did defendant have any weapon or something of a similar nature which could have been used as evidence against him.

(8) That, the affidavit for search warrant was too broad and indefinite, therefore defective.

(9) The first search warrant and the second search warrant were invalid for reasons stated above.

(10) That, the prosecution in its response filed on September 13, 1976, admitted that the retail contracts were between IET and Associates therefore if the student was not involved there could not be a forgery because the student's signature becomes moot.

(11) That, Title 5, U.S.C. 552a, subsection 7 (Student Privacy Act) states that written permission must have been obtained from the head of the agency before seizure. If the agency was IET, then no permission was obtained from that agency, by anyone, before seizure. If the agency was Associates, it gave the Commonwealth Attorney's office all student contracts and records prior to the indictment, this in direct violation of the Act. No criminal charges were filed against anyone at that time and no permission was obtained from the student or head of the agency, before seizure.

(12) That, the prosecution and the sheriff seized evidence which was a part of a "system of records" kept by IET.

(13) That, the search warrant is null and void.

(14) That, such instruments were in direct violation of KRS Sections 360.210 through 360.265, more specifically 360.260 which states that State law shall require disclosure of items of information substantially similar to the requirements of any applicable Federal law. This means, in essence that the retail contracts and tuition agreements between IET and Associates did not state the information which has been covered heretofore. (See RCr 8.16 and RCr 8.18 of the Kentucky Rules of Criminal Procedure. Also see, *Commonwealth* v. *Brewer,* 67 S. W. 994 and *Davis* v. *Commonwealth,* 399 S. W. 2d 711; Title 5, U.S.C. 552a, subsection 7; KRS 360.210 thru 360.265, more specifically 360.260. Also see 12 CFR Sec. 226, Title 12, Chapter II, Part 226 and Title 1, Truth & Lending Act and Title 5, General Provisions, Consumer Credit Protection Act; Public Law 90-321, 82 Stat. 146 et seq. effective July 1, 1969. Also see *Smith* v. *Commonwealth,* 504 S. W. 2d 708 (1974) and Transcript of Proceedings dated January 24, 1977, pp. 2 thru 5.)

Defendant asked the Court for an order to produce exhibits upon which basis the affidavit of the search warrant was issued, however, the Court and prosecution failed to produce the same. (See Transcript of Proceedings, Vol. I, p. 2.)

Defendant asked the Court for an order for the following:

1. That, Associates is not the injured party in this case, therefore, the indictment herein should be dismissed for failure to meet the requirements of KRS 516.060 for counts 1 through 41.

2. The affidavit for search warrant was defective on its face, as to information and substance based upon the following:

(a) No exhibits were attached to the affidavit upon which basis the search warrant was issued.

(b) Style of the affidavit did not contain the words "The Commonwealth of Kentucky" at the top of the document.

(c) The affidavit for search warrant stated that Associates had purchased from Jerry Knapp, 467 agreements which were forgeries or represented agreements on non-existent students, which were not true.

(d) Associates did not purchase said contracts from Jerry Knapp individually, but rather, from IET.

(e) The Commonwealth's attorney based his affidavit for search warrant upon the testimony of Robert Joseph Grant of Associates, yet the Commonwealth's attorney testified in open court at a hearing held on September 27, 1976, by stating on page 54 of the transcript:

> "What does Government loans and copies of records of Government loans given to the school have to do with forgeries? What do cancelled checks of the school have to do with forgeries? What do college work study payroll books, where they pay students have to do with the books? What do payroll books as to the secretary, the janitors and pay-

ment of rent, what does that have to do, as to whether or not—and the funds—to the forgeries * * *."

Yet, the Commonwealth's attorney picked up a truckload of evidence from the premises of IET which included the above, and has retained them since that time. (See RCr 8.16 and RCr 8.18 Kentucky Rules of Criminal Procedure. Also see Transcript of Hearing dated September 27, 1976, p. 54.)

The "Second Supplemental Motion to Suppress Evidence or Dismiss Indictment" filed on Sept. 17, 1976, states as follows:

"1. That, the Commonwealth Attorney's Office unlawfully seized certain records of individuals which were part and parcel of a 'system of records' from IET, without the prior written consent of the individuals in question, all in violation of Title 5, United States Code, Section 552a et seq.

2. That, Federal law cited heretofore states that no agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to

the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

3. That, the Commonwealth Attorney's office did not obtain prior written request to the head of the instrumentality which maintain said records specifying the particular portion desired and the law enforcement activity for which the record is sought, all in violation of Title 5, USC Section 552a, et seq.

4. That, as further grounds, such instruments are in direct violation of KRS 360.210 thru 360.265 and KRS 360.260 states * * *.

DATED on this 17th day of September, 1976."

This Motion was overruled by the Court in its pretrial Hearings on September 27, 1976.

In 1966, Congress enacted the "Freedom of Information Act" to insure that the American public could find out how the Executive Branch of the Government was operating. (See Public Law 89-554, amended June 5, 1967 by Public Law 90-23, Section 1, 81 Stat. 54 (codified at 5 U.S.C. Section 552 (1970).) The Act requires that certain matters be published in the Federal Register, that some documents be made available for public inspection and copying, and that records not covered by the first two categories be released pursuant to a request by a member of the public unless they are exempt from disclosure. (5 U.S.C. Section 552 (Supplemented 1976).) The Act was amended in 1974 to provide easier and quicker access to government records. (Act of November 21, 1974, Public Law No. 93-502, Sections 1-3, 88 Stat. 1561.)

The Privacy Act of 1974 was enacted to restrict the collection, maintenance, use and dissemination by federal departments and agencies of information about people. (Privacy Act of December 31, 1974, Public Law No. 93-579, 88 Stat. 1896, Sec. 3 codified at 5 U.S.C.A. Sec. 552a (Supp. 1976).)

The relationship between this law and the Freedom of Information Act has been the subject of discussion and much confusion. The question of the relationship between the Freedom of Information Act and the Privacy Act arises in two situations, (1) in which a member of the public requests a record which contains personal information pertaining to someone else and (2) where an individual seeks access to a record which contains information about himself. In order to understand the relationship between the statutes, these very different situations in which the question arises must not be confused.

The Privacy Act of 1974 does not directly affect this balancing process of the requirement under the Freedom of Information Act to disclose records which are not deemed to be exempt under any provision of that law. Rather, the Privacy Act specifically authorizes disclosure from systems of records which it covers when such disclosure is required by the FOIA. (See 5 U.S.C.A. Section 552a(b)(2).) The key word is "required." The language of FOIA requires that certain matters be disclosed but does not require that anything be withheld. (See *Charles River Park "A"* v. *HUD,* 519 F. 2d 935 (D.C. Cir. 1975), *Contra, Westinghouse* v. *Schlesinger,* 392 F. Supp. 1246 (E.D. Va. (1974).)

In view of the balancing test referred to above, it appears that in many cases the intent of the Privacy Act could be defeated by Federal agencies. While release of information about an individual contained in a file to a member of the public interested in employing the individual might be a clearly unwarranted invasion of personal privacy, an argument could be made that release of that same information to another agency would not constitute such an invasion, and hence its disclosure to that agency would be "required" under the FOIA.

The free inter-agency transfer of personal information is exactly the sort of thing the Privacy Act was designed to remedy.

This, in essence, means that in this case, the Commonwealth Attorney's office seized records of students, IET corporation and the defendant as an individual, most of which were part of a "system of records" kept by IET which were violated by the Commonwealth Attorney's office and the Sheriff of McCracken County.

Don Edwards, Branch Manager of Associates, testified under cross-examination that with respect to Comm. Exhibits A & B-5, A & B-1 and A & B-3 two checks were issued by Associates dated December 30, 1975 in the sum of $2,486.25 each, one day before New Year's Eve and students and their financial status verified by Associates. The verifications were dated Decembr 30, 1975. Mr. Edwards did not do the checking himself. The deals would come in and one of his

cashiers would do the actual investigating and Mr. Edwards would state:

> "Have you verified all of the deals and found that they were actual students?"

The answer would be "Yes" and Mr. Edwards would issue the checks. Normally, Pat Driver and Debbie Cummings would do the verification. He would also state:

> "Have you verified that the students are in school?"

The girls would say "Yes" and Mr. Edwards would issue the checks.

In other words, one or more of Mr. Edwards' office employees or the office manager of Associates would verify the students or the students' names before the checks were issued by the office manager. (See T. of T., Vol. IX, pp. 1262 thru 1264; Vol. X, pp. 1327 thru 1328.)

Also, Mr. Edwards testified under direct examination that he issued a check for Comm. Exhibits 34-A-3 and 34-B-3, where there were no signatures of IET on the assignments on the reverse side of the retail contracts from IET to Associates, at the time of issuance of the check. (See T. of T., Vol. IX, pp. 1232, 1273 thru 1274.)

The checks were typed up by one of the girls of Associates, however, either Don Edwards or Ron Hanson, Branch Managers of Associates, signed these checks. (See T. of T., Vol. IX, pp. 1276 thru 1277.)

Mr. Edwards of Associates also testified that they verified the fact that the students were in school and called the students' employers. (See T. of T., Vol. X, pp. 1341 to 1342.)

Mr. Edwards further testified that the 41 contracts which were sitting in the courtroom were verified by someone in Mr. Edwards' office of Associates; that someone in Mr. Edwards' office verified that student and that particular name of the student appeared on the contract before issuance of the check. (See T. of T., Vol. X, p. 1343.)

This, in essence, means that the defendant at no time had knowledge that the contracts referred to in the indictment were forged or that the defendant uttered or possessed any forged instrument with the intent to defraud, deceive or injure another. This testimony of Mr. Edwards in verification of the contracts by Associates and the subsequent issuance of the checks corroborates the testimony of the defendant that defendant did not commit any of the elements of the crime. Further, Mr. Edwards' testimony rebuts the prosecution's circumstantial evidence of knowledge made in the prosecution's closing statement, that circumstantial evidence being the proposed agreement which was prepared by consent of both corporations (IET and Associates), after the fact and to settle a controversy between them. "Knowledge" cannot be proved by circumstantial evidence and the circumstantial evidence attempted to be proved by the prosecution was after the fact.

Defendant filed a motion for directed verdict and/or to dismiss based upon the fact that the prosecution failed to prove "knowledge" and "intent", anywhere in the record of this case. There is no direct evidence that defendant had knowledge that the instruments were forged. Therefore, defendant feels that the prosecution has failed to prove its case. It is true that defendant took the contracts over to Associates, however, Sheila McLeod and Carol Reid did not testify that the defendant knew of the alleged forgeries and the intent to defraud Associates.

The prosecution further stated to the trial court that it had direct evidence of utterance. This is not true because the prosecution tried to prove knowledge by circumstantial evidence.

All of the witnesses that the prosecution introduced could not state under oath whether the instrument was forged or by whom or when it was forged. These witnesses had absolutely no knowledge of the fact that the contracts were forged instruments. So, therefore, how could these witnesses know that defendant knew that the instruments were forged when they themselves did not even know if it was a forged instrument. Therefore, the prosecution has not proven the most crucial element of this crime, that being the knowledge and intent of the defendant that the instrument was forged and that defendant intended to injure another. All of the students and secretaries who testified could not prove knowledge and intent. All of Associates' witnesses testified that the first time they knew about this situation was on or about January 26, 1976. (See

T. of T., Vol. XIV, pp. 1992 thru 1998. Also see *Hatton* v. *Comm.,* 172 S. W. 2d 564 and *Bullock* v. *Comm.,* 60 S. W. 2d 108.)

Mr. George Schmidt, CPA since 1972 and auditor of Associates, along with all the other witnesses of Associates, admitted that he did not know anything until the meeting of January 30, 1976 with Mr. Strole, Grant, Albert, May, defendant Knapp and himself and that Schmidt had written the note dated January 30, 1976 admitting that Associates had purchased incomplete contracts by the branch and that an incomplete and inadequate credit investigation was made by the branch of Associates. (See T. of T., Vol. XIII, pp. 1850, 1860, 1882 and 1889).

Furthermore, Mr. Schmidt testified that Associates owed IET or Knapp the sum of $183,890.00 and that Knapp did not need to know about this figure. Mr. Schmidt made an inter-agency note at the bottom of this memorandum which stated to everyone that Associates needs to hide this factor from IET. (See T. of T., Vol. XIII, pp. 1878 thru 1879.)

On the other hand, Mr. Schmidt, on direct examination, denied that Associates owed IET or Mr. Knapp $183,890.00, therefore, Mr. Schmidt made inconsistent statements under oath in giving one or the other answer. (See T. of T., Vol. XIII, p. 1847.)

Mr. Schmidt testified that Associates owed IET $568,247.37 and that figure added to $183,890.00 adds up to $752,137.37 which Associates owes IET. (See T. of T., Vol. XIII, pp. 1875 thru 1876.)

Mr. Schmidt never verified the figure of $315,771.00 that was claimed as a loss by Associates. In fact, Mr. Schmidt did not know where the figure $1,847,671 came from nor any of the other figures on the blackboard displayed to the jury. (See T. of T., Vol. XIV, pp. 1904 thru 1907.)

This in essence, means that the testimony of Mr. Schmidt with regard to the amounts placed upon the blackboard for the jury to observe were figures from Associates' computer which he did not verify or could not verify. Defendant, during the trial of this case, made several motions and requests that the blackboard be removed from the observation of the jury because the figures on the blackboard were inaccurate and were not germane to the issues in the indictment. The court overruled defendant's several motions and requests throughout the trial and the jury was allowed to view the blackboard for a period of 19 days which highly prejudiced the substantial rights of the defendant.

Therefore, Mr. Schmidt's testimony proved that he did not know about the 41 contracts involved in the indictment. In fact, Mr. Schmidt did not audit or investigate how many of the 41 contracts in this case had been paid off or still had a remaining balance on them. (See T. of T., Vol. XIII, pp. 1897 to 1898.)

Mr. Kenneth R. Strole, Regional Vice-President of Associates, made three inconsistent statements as to where the figures on the blackboard which were in plain view of the jury, came from. Mr. Strole gave three separate inconsistent answers to one question, the first being on direct examination that Mr. Strole did not

know where the figures came from, then he changed his story and started to tell the jury and the court that they came from home office reports and again told the judge and jury that they came from a computer. (See T. of T., Vol. XIV, pp. 1960, 1970 thru 1972).

This, in essence, means that Mr. Strole's testimony did not prove any of the elements that the defendant is accused of in the indictment.

The only thing Mr. Strole testified to on direct examination which corroborates the testimony of the defendant and Mr. Schmidt is that the contracts were verified by Associates prior to issuance of the checks. (See T. of T., Vol. XIV, p. 1921.)

During a conference at the bench, while taking the testimony of Mr. Strole, the prosecution stated that the proposed agreement shows defendant had knowledge of this situation because he was present at the meeting and went along with this, and if this is not knowledge, the prosecution does not know what it is. (See T. of T., Vol. XIV, p. 1927.)

Here, again, the prosecution attempts to show on the part of defendant that defendant had knowledge because of Mr. Strole's testimony, however, an objection by the defense, sustained by the court, shows that the proposed agreement prepared between IET and Associates was simply to release claims by both corporations and to settle the controversy and that defendant, being an individual, was not involved in the transaction. The prosecution again was in error because this was all after the fact. (See T. of T., Vol. XIV, pp. 1932 to 1933.)

Yet, Mr. Strole and Mr. Schmidt, who were in charge of the audit staff, both decided to supend the confirmation program if the defendant would provide them with an accurate list of the students, which defendant did, and forced defendant to pledge collateral which belonged to defendant individually for the alleged loss sustained by Associates. The loss was created in behalf of Associates by the figures furnished to defendant for the proposed agreement between IET and Associates, namely, Mr. Strole and Mr. Schmidt. (See T. of T., Vol. XIV, p. 1940.)

This, in essence, means that the victims of the crime, allegedly Associates, not only verified all of the student contracts before issuing the checks, but also proposed an agreement to defendant in behalf of IET for alleged losses sustained by Associates and backed up by collateral pledged by the defendant as an individual. The pressure on the defendant was that if a criminal charge was made against any official of IET, all programs, Federal and State, would come to a close and terminate the school.

The prosecution failed to prove elements of the crime under KRS 516.060, that being:

1. A person is guilty of criminal possession of a forged instrument in the second degree when, with "knowledge" that it is forged,

2. And, with the intent to defraud, deceive or injure another,

3. He utters or possesses any forged instrument of a kind specified in KRS 516.030.

In other words, the prosecution did not prove "knowledge" or the "utterance" or "possession" of a forged instrument. The only thing that the prosecution proved was that it was a normal course for defendant and 10 other people to handle the discounting of contracts between IET and Associates over a 4 year period. As a result, the issues settled by the verdict were wholly immaterial and the jury's verdict was palpably against the evidence.

Thus, the Trial Court should have granted defendant's "Motion for a Directed Verdict and/or Motion to Dismiss" at the close of prosecution's case based upon the fact that the prosecution failed to prove every element of this crime. However, the Trial Court denied the same. (See T. of T., Vol. XIV, pp. 1991 thru 1999.)

In this case, evidence was heard on all dismissed counts by Associates' own witnesses who testified for the prosecution about 467 retail installment contracts and tuition agreements discounted for $1,084,000.00 over a 4 year period between 1972 and 1976 by IET and Associates. However, those witnesses should have been testifying only to the 16 (actually 15 or less) remaining counts of the indictment allegedly discounted between January 1975 to February 1976, being the subject matter of the indictment. For this proposition, defendant cites *U. S. v. Cooper,* 464 F. 2d 648, 10th Circuit (1972), certiorari denied 409 U. S. 1107, wherein the Court held that it may be assumed that the jury complied with the court's instructions to disregard the evidence about counts that had been dismissed by order

of the court. However, it further held that the jury cannot and must not convict on assumption.

In the case of *U. S.* v. *DeCavalcampe,* 440 F. 2d 1264, 3rd Circuit (1971), the Court held that evidence on an insufficient count was held to taint the entire conviction. Now, the insufficient counts in this case were the count on Rick Lawson, being count #1, D. Johnson, being count #2 and Alan Duhs, being count #4. The evidence on the insufficient counts tainted the entire conviction of the remaining 16 (actually 15 or less) remaining counts after the 25 counts were dismissed by the prosecution on its own motion and by order of the Court. (See above.)

In the case of *U. S.* v. *Dreyfus,* 528 F. 2d 1965, 5th Circuit (1976), the Court held that when it is determined certain counts should never have been before the jury, the possibility of prejudice must be explored.

Defendant requested a third order directing the Commonwealth Attorney to comply with the order of the Trial Court, Division I, entered on February 10, 1977, at once, before trial, to produce and disclose the verifications executed by the 25 students named in the defendant's Motion dated April 22, 1977 and filed on April 25, 1977, as to the genuineness of their signatures on the 25 retail contracts which were the subject matter of the 41 count indictment.

However, the Trial Court, Division II, again denied this Motion on May 5, 1977 appearing in the Transcript of Hearing dated May 3, 1977, pp. 1 thru 10.

It was error and an abuse of discretion under all of the circumstances for the trial court to deny appellant

(defendant) the benefit of expert testimony of James Dibowski of Cincinnati, Ohio where the prosecution had to prove defendant's "knowledge" and "utterance or possession" of a forged instrument in violation of KRS 516.060. Knowledge of the forgery remains an essential element of an uttering conviction. *Montgomery* v. *Comm.,* 224 S. W. 878 (1920). (See T. of T., Vol. I, pp. 6 thru 23; Vol. I, pp. 26 thru 34 and Vol. II, pp. 215 thru 222).

Defendant moved the Court for an order to allow defendant to submit the signatures appearing on Court's Exhibits No. 1, 2 and 4 for a spectrograph analysis to be performed by an expert in that field, for purposes of determining whether the ink used for the signatures appearing on the affidavit as compared with the ink used for the signature appearing on the search warrant, were applied at the same time or at a later time. (See T. of T., Vol. I, p. 103.)

The prosecutor in this case, states in Volume XIV, p. 1987, that counts 4, 3, 6, 8, 9, 14, 16, 21, 22, 26, 27, 30, 32, 34 and 39 are the 16 counts that he does not wish to dismiss. However, on p. 1988, he agreed with the Court that counts 4, 5, 7, 10, 11, 12, 13, 15, 17, 18, 19, 20, 24, 25, 28, 29, 31, 33, 35, 36, 37, 38, 40 and 41 be dismissed on his own motion and approved by the Court. The prosecution, previous to dismissing the 24 counts as mentioned above, also dismissed upon his own motion *count No. 1* of the Indictment naming Rick Lawson which in effect means that the prosecution has dismissed 25 counts of the original 41 count indictment. These dismissals leave remaining 15 counts of the

original 41 count indictment because *count 4* in the indictment names Alan Duhs which was *both dismissed and retained* by the prosecution and approved by order of the Trial Court. However, the Court gave 16 instructions to the jury in connection with 15 counts remaining in this case, none of which is an instruction on Alan Duhs. Furthermore, in the indictment *count 2* refers to D. Johnson. In accordance with the prosecution's motion and the court's order, no reference of *retaining or dismissing count 2* was made in T. of T., Vol. XIV, pp. 1987 and 1988, however, the court's Instruction No. 1 to the jury names D. Johnson, which is contrary to the court order appearing at T. of T., Vol. XIV, p. 1988. This, in essence, means that no instruction should have been given to the jury naming D. Johnson in connection with *count 2* of the indictment because the instruction did not fall within the prosecution's motions and the trial court's order as stated above. Therefore, error was committed by the Trial Court in allowing the jury to convict and sentence the defendant based upon erroneous instructions by the Trial Court and allowing the jury to see the exhibits in connection with *count No. 2.*

Also, refer to the "Transcript of Hearing and Sentencing" page 5 where the Court states:

> "* * * Also, at this time, the law requires that the defendant be notified of his right to appeal. I believe with this sentence of twenty years, it is appealed directly to the Supreme Court."

Mr. A. Avedisian: "So, the sentence is twenty years?"

Thereafter the court stated:

> "Yes, *five years* on each of *four counts* and the rest to run concurrently with those. The four shall be *Count #3, Count #2, Count #6* and *Count #8.* As I said, also the statute provides that at the time the Court sets sentence, it must notify the defendant of his right to appeal, which I am now doing."

This proves that the error was substantial and prejudicial to the rights of the defendant.

In support of the above, *Greene* v. *United States of America,* 358 U. S. 326, 3 L. Ed. 2d 340, 79 S. Ct. 340, the United States Supreme Court held on page 342 as follows:

> "Petitioner sought certiorari on the grounds that the sentences invalidly multiply punishments for single offenses, and that the Court of Appeals erred in failing to determine the validity of the several sentences and in holding that imprisonment for an aggregate period of 5 to 15 years is authorized by its finding that 'at least 5 of the sentences that were to run "concurrently with" the 3 consecutive sentences (are invalid).' We granted the writ to determine those questions. 357 U. S. 934, 2 L. Ed. 2d 1549, 78 S. Ct. 1386. * * *
>
> The question whether, in these circumstances, the law permits the imposition of a single 'gross sentence' upon several counts exceeding the maximum sentence that may lawfully be imposed upon any one of such counts is not presented here, for we think the Government's contention that these 15 sentences were, or may be treated as, one 'gross sentence' to imprisonment for a period of 5 to 15

years is unsupportable and is contradicted by the plain words of the recorded judgment. 'The only sentence known to the law is the sentence or judgment entered upon records of the court.' *Hill* v. *United States,* 298 U. S. 460, 464, 80 L. Ed. 1283, 1286, 56 S. Ct. 760. The judgment entered on the records of the court in this case explicitly imposed a separate sentence of from 20 months to the then permissible maximum of 5 years on each of the 15 counts. It is therefore plain that the court did not impose one 'gross sentence' to imprisonment for a period of 5 to 15 years.

The judgment makes the separate sentences on Counts Two, Four and Seven to run consecutively. Thus, if each is valid, they in sequence authorize imprisonment for an aggregate period of 5 to 15 years. But the judgment makes the separate sentences on the other 12 counts to run concurrently with each other (hence for a total period of 20 months to 5 years) and 'with the sentences imposed on Counts Two, Four and Seven,' without saying *(358 U. S. 330) whether *those 'concurrent' sentences are to run with the sentence on Count Two, with the consecutive sentence on Count Four, or with the consecutive sentence on Count Seven.

It is therefore evident that the Court of Appeals, was in error in concluding that the 5 'concurrent' sentences which it thought were valid alone support an aggregate period of improsonment of 5 to 15 years.

The rule that reversal is not required if any one of several concurrent sentences is valid and alone supports the sentence and judgment, *Hirabayashi* v. *United States,* 320 U. S. 81, 85, 87 L. Ed. 1774,

1778, 63 S. Ct. 1375 and cases cited; *Pinkerton* v. *United States,* 328 U. S. 640, 642, note 1, 90 L. Ed. 1489, 1493, 66 S. Ct. 1180; *United States* v. *Sheridan,* 329 U. S. 379, 381, 91 L. Ed. 359, 364, 67 S. Ct. 332; *Roviaro* v. *United States,* 353 U. S. 53, 59, note 6, 1 L. Ed. 2d 639, 644, 77 S. Ct. 623; *Lawn* v. *United States,* 355 U. S. 339, 359, 2 L. Ed. 2d 321, 335, 78 S. Ct. 311, does not aid the Government, for no one of the 'concurrent' sentences, or even all of them together, could, even if geared to a particular (though invalid) consecutive sentence, support imprisonment for more than 20 months to 5 years. If any one of the consecutive sentences on Counts Two, Four or Seven be invalid it cannot be said that such of the 'concurrent' sentences as are valid will run with such invalid consecutive sentence, and thus support that much of the aggregate term of imprisonment, because the trial judge did not make the concurrent sentences to run with any particular one of the consecutive sentences. It is therefore clear, under the present sentences, that imprisonment for an aggregate period of 5 to 15 years can be sustained only if each of the consecutive sentences on Counts Two, Four, and Seven is valid. Hence it is necessary for the Court of Appeals to pass upon the validity of the consecutive sentences. The judgment of the Court of Appeals is vacated and the cause is remanded to that court for further proceedings not inconsistent with this opinion.

It is so ordered."

This issue was argued by appellant during oral argument before the appellate court on March 13, 1979, and the motions herein stated.

Count No. 27 in the indictment refers to the forged signature of R. Essner, however, in Volume IV, p. 526, Stanley Essner testified with reference to count No. 27 of the indictment, which means that the prosecution tried to prove its case by students who were not properly named in the indictment. Another example is count No. 8 of the indictment bearing the forged signature of W. Catron instead of Randy W. Catron testifying in Vol. III, p. 342. This, in essence, means that the indictment was defective and the prosecution did not prove its case by evidence showing that W. Catron's signature was forged.

In continuing defendant's Motion for Directed Verdict and/or to Dismiss, the 16 (actually 15 or less) counts of the indictment now pending have not been proved by the prosecution. The Indictment reads as follows:

> "On or about the ___ day of _____, 19__, in McCracken County, Kentucky, the above named defendant (who happens to be Jerome A. Knapp), committed second degree criminal possession of a forged instrument by uttering to an employee of Associates Financial Services of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of _____ and obtaining thereby from said employee the sum of $2486.25, against the peace and dignity of the Commonwealth of Kentucky."

The indictment is insufficient and proof is lacking by the prosecution that defendant, Jerome A. (Jerry) Knapp obtained from an employee of Associates the

sum of $2486.25 against the peace and dignity of the Commonwealth. There has been no proof to that effect whatsoever. Every witness on the stand in behalf of the prosecution stated that the checks were written to IET and not to defendant (T. of T., Vol. XIV, pp. 1998 thru 1999).

The indictment does not state that the defendant by and through the corporation, obtained this sum of money and there has been no proof to that effect. The burden of proof is on the prosecution and it has not carried out its burden (T. of T., Vol. XIV, p. 2000).

In Annotation 33 ALR 787, a different result was reached for corporate acts constituting embezzlement, instead of the case at bar, but were those of other employees and not those of an officer of the corporation to be held responsible. Thus, the indictment and the counts therein are insufficient and there has been no evidence to prove every allegation in the indictment and the statute is not a defense thereto. The Trial Court overruled defendant's motion but the same is part of the record (T. of T., Vol. XIV, pp. 2001 thru 2007).

Prosecution's Response stated as follows:

> "Albert Jones, Commonwealth's Attorney, Second Judicial District of Kentucky, Attorney for Plaintiff, states that the Contracts and Tuition Agreements which the defendant states are in violation of Federal law and Federal Regulations and are therefore, according to defendant inadmissible in evidence, are contracts and tuition agreements formulated by the defendant himself as President of his _____ and not by the victim of the

fendant's forgeries and therefore would certainly be odd that the defendant could say that the evidence would not be admissible because of his illegal contract. Besides that, the defendant has no authority on this issue.

Wherefore, plaintiff moves that the motion be overruled.

Signed_____"

Albert Jones

The Response of prosecution proves that the retail installment contracts and tuition agreements, the subject matter of the indictment, were between defendant as president of the corporation (IET) and Associates. If the students were not involved, then there could not be a forgery of the students' signatures.

The Court sustained defendant's response in the pre-trial hearings of September 27, 1976, more specifically pp. 77, 81 and 82.

Names and addresses of the informants who gave the necessary evidence to the Commonwealth Attorney's office which resulted in the forty-one (41) count Indictment being returned against defendant and the dates of notification and/or delivery of such evidence by each informant to the Commonwealth Attorney's office, with a description of the exact evidence that each informant turned over to the Commonwealth Attorney and a detailed list of the description of such evidence to be introduced at the trial of this case, were requested by the defendant, however, the prosecution did not comply with defendant's Bill of Particulars. (See RCr 6.22 Kentucky Rules of Criminal Procedure.

Also see Transcript of Proceedings dated January 24, 1977, pp. 2 thru 6.)

The prosecution did not comply with defendant's Motion for Discovery and Inspection because it did not allow the defendant to enter the third drawer of the filing cabinet located in the Commonwealth Attorney's office which housed records of IET in connection with the indictment. (See RCr 7.24, Kentucky Rules of Criminal Procedure. Also see Transcript of Proceedings dated September 27, 1976, pp. 2 thru 25. Also see Transcript of Proceedings dated August 31, 1977, pp. 90 thru 93.)

The prosecution did not comply with defendant's "Second Supplemental Motion for Bill of Particulars and/or Dismiss Indictment" filed June 20, 1977.

Defendant states as follows:

1. Time of day and date that each of the 41 retail installment contracts and tuition agreements were allegedly sold by defendant and/or IET and to whom sold.

2. Where the sale and purchase took place.

3. Who was present at that time.

4. Who purchased and accepted the same, and if a corporation, name of the officer or individual acting in behalf of the buying corporation at the time of purchase.

5. Name of the person acting in behalf of the buying corporation who approved each of the 41 contracts for purchase.

6. Name of the individual acting in behalf of the buying corporation who approved the purchase.

7. Name of the person in behalf of the buying corporation who verified the credit information on each of the 41 contracts.

8. Whether the parents and employers of the students were contacted and by whom, on each of said contracts.

9. Names of the individuals acting in behalf of the buying corporation who verified the students' signatures, if any, at the bottom of each of said contracts, at the time of purchase.

10. Whether all 41 contracts in the indictment had a student's signature at the bottom of the contract at time of purchase, and if not, the names of students whose signatures did not appear at the bottom of the contract at that time.

11. How many said retail contracts were sold to the buying corporation that did not have a student's signature at the bottom of said contract, and the names of the students so involved.

12. Any other evidence essential to the elements of the offense so charged against the defendant.

13. The Commonwealth's attorney has made an admission on page 170 of the Transcript of Hearing held by the Trial Court on February 3, 1977, that defense counsel is entitled to receive the foregoing information before trial and that defendant's counsel demanded the same. (See RCr 6.22, Kentucky Rules of Criminal Procedure. Also see Transcript of Hearing dated August 31, 1977, p. 3.)

On August 22, 1977, defendant moved for an order of the Trial Court, which was denied, in that the disclosures and redisclosures of the 41 contracts contained in the indictment must be suppressed as evidence in this case because of violation of Title 20, U.S.C. 1232(g) and other pertinent statutes. On that date, defendant further moved that the prosecution's answer to defendant's bill of particulars states that the 41 contracts had an applicant's signature at the bottom of each of said contracts at the time of sale and purchase thereof "so far as known to the Commonwealth", however, defendant states that each of said contracts did not have an applicant's signature at the bottom at the time of sale and purchase thereof. On that date, defendant further moved that each of said 41 contracts lacked legal efficacy upon the grounds that there were no finance charges and other information required by law reflected in said contracts between Associates and IET, that, after taking into account all of the holdbacks, interest and finance charges improperly and illegally made by Associates with respect to the contracts in the indictment, there was no victim in this case to support the charge made against the defendant under KRS 516.060. (See RCr 8.16 and RCr 8.18 Kentucky Rules of Civil Procedure; also see Title 20, U.S.C. 1232(g) and Transcript of Hearing dated August 31, 1977, pp. 94 thru 104.)

On August 26, 1977, defendant moved for an order of the Trial Court, which was denied, in that records of the students who were the subject matter of the 41 count indictment were seized by the Commonwealth Attorney's office by subpoena issued therefor, which records were located at IET and at the Paducah Bank and

Trust Company, that no notification whatever was given by the Paducah Bank and Trust Company to the defendant, who was custodian of the records, in order to enable defendant to obtain the consent of the student or parent before a disclosure and redisclosure was made by said bank to the Commonwealth Attorney's office or any other third party whomsoever.

On that date, defendant further moved that the Commonwealth Attorney's office should have notified defendant, who was custodian of the student records, prior to seizure by subpoena of said student records located at said IET and at said bank, in order to enable defendant, as custodian, to notify the student or parent and to give the opportunity of the student, parent and custodian to inspect and correct any discrepancies contained in said records and to obtain the necessary consent and approval before disclosure and redisclosure of the same.

On that date, prior to the issuance of any subpoenas for said records, said bank voluntarily furnished photo copies of said students' records to Associates, without first permitting the student or parent and defendant to inspect and correct any discrepancies contained in the same, and without the necessary consent or approval of anyone in connection therewith, all in violation of defendant's substantial rights under Title 20, U.S.C. 1232(g), the Constitution of the United States and the Constitution of the Commonwealth of Kentucky. (See RCr 8.16 and RCr 8.18 Kentucky Rules of Criminal Procedure, also see Transcript of Hearing dated August 31, 1977, pp 94 thru 104.)

The prosecution, in its response stated as follows:

1. As ground No. 1 defendant's motion regarding disclosure of the retail contracts which are the subject matter of the indictment (defendant states) violated the Privacy Act of 1974. The prosecution denied that this violated Title 20 U.S.C. for a number of reasons, some of which are that this law obviously did not apply to situations similar to this; that, this law merely placed economic sanctions upon the educational institution which allowed other persons access to educational records of students. Having read the law, the prosecution stated that this would apply where an educational institution such as IET allowed collection agencies, mailing lists, or things of that nature into the files of said school. The prosecution further stated that this is a lawful Search Warrant upon which an educational institution was being run partially on funds which were illegally obtained by the defendant herein, Jerome A. (Jerry) Knapp.

With regard to the prosecution's ground No. 1 defendant states that the prosecution did not address himself to Associates, but rather, only to the school. Furthermore, the prosecution stated that the law merely placed a "penalty" on educational institution, however, defendant is talking about "voluntary disclosures" in his motion of August 22, 1977 and nothing else. Defendant is not talking about penalties or economic sanctions upon the institution. Furthermore, defendant states that the school got the funds and not the defendant individually, which is corroborated by the evidence in this case.

2. As ground No. 2 of defendant's motion, defendant denied that each contract had a signature at the bottom at time of sale and purchase thereof. The prosecution states that this is strictly a question of proof and not a matter which should be heard upon a motion to dismiss.

Defendant states that the burden of proof was on the prosecution which the prosecution failed to carry.

3. As to ground No. 3 in which defendant stated that each of the 41 contracts lacked legal efficacy upon grounds that there were no finance charges and other matters as required by Federal law, once again the proscution stated that this had no bearing upon the case at hand. The prosecution stated that what defendant referred to was the Truth in Lending Law and that law simply requires that a consumer be given certain information regarding finance charges.

Further, the law goes on to state that if a consumer is not provided with this information, the consumer can bring legal action within one year's time. This law does not apply to this case, but even if it did, the only person who could bring an action would be the consumer, and under the law, Knapp was not the consumer, but the students were. Nevertheless, the Truth in Lending Law does not make a contract void nor voidable. It too provided sanctions against a person disobeying said law and if there was found to be a violation, the consumer could recover damages of twice the finance charges not to exceed a minimum of $100.00 or a maximum of $1,000.00.

Defendant states as his argument that he is not talking about only Federal law, but also Kentucky law. Also, defendant is not talking about the Truth and Lending Law only. He is also talking about the violation of Title 20 U.S.C. 1232(g) and KRS 360.210 to 360.265 in his motion to suppress or dismiss.

4. As to ground No. 4 of defendant's motion to suppress, the prosecution denied that the holdbacks, interest and finance charges were improperly and illegally made by Associates with respect to the contracts in question, since those contracts were made in conformity with the dealer arrangement entered into in July 1972 between IET and Associates, said agreement having been signed by the defendant, as well as his partner, Richard May, Marilyn May and Mr. Strup of Associates. Hence, large amounts of money were fraudulently procurred by the defendant, and there was a victim in this case.

Defendant states as his argument that there was no mention made of finance or interest charges in the dealer agreement. The prosecution must have been referring to a Security Agreement which has nothing to do with this case. Interest and finance charges were made against IET and not the student and the dealer agreement was only signed by defendant Knapp and not the others.

Defendant also states that Associates was not the victim in this case as shown by the evidence. Therefore, the prosecution did not prove who the victim was in this case, even though the prosecution stated on page 72 of the Transcript of Hearing dated September 27,

1976 that Associates was the victim. (See Transcript of Hearing dated September 27, 1976, pp. 67 thru 84.)

Defendant's Motion to Suppress filed Sept. 2, 1976 states as follows:

> "1. That, the 41 allegedly forged instruments allegedly uttered to an employee of Associates Financial Services Company of Kentucky, Inc., (retail installment contracts and tuition agreements) between IET and Associates, bearing the allegedly forged signatures of several parties named in the criminal indictment returned herein the above styled action allegedly in violation of KRS 516.060, as set out in said indictment, do not meet the requirements and are in direct violation of the Federal Reserve Board Regulation 'Z'.
>
> 2. That, as further grounds, such instruments are in direct violation of 15 USC Sections 1601-1691 and/or any other pertinent Federal Statute in relation thereto.
>
> 3. That, as further grounds, such instruments are in direct violation of KRS 360.210 through 360.265 and KRS 360.260 states that State law shall require disclosure of items of information substantially similar to the requirements of any applicable Federal law. To effectuate this intent, notwithstanding any provisions of KRS 360.210 through 360.265 to the contrary, the Commissioner is specifically authorized, empowered and directed to adopt such interim regulations governing the information to be disclosed and the manner of disdisclosure so as to assure that the requirements of the State law meet the requirements of such applicable Federal law effective January 1, 1969.

> 4. That, the foregoing evidence did not meet the requirements as set out above, thus, the same should be suppressed and/or the indictment herein be dismissed.
>
> DATED on the 2nd day of September, 1976."

Written permission must have been obtained "before seizure" of the records from the "head" of the agency. If the agency was IET, then no permission was obtained. If the agency was Associates, they gave the Commonwealth Attorney "all" student contracts and records relating thereto, prior to the indictment, thus in violation of the Act. No criminal charges had been filed before seizure and no permission was obtained from the student or head of the agency.

Furthermore, it was Associates responsibility to inform the student that the retail installment contract and tuition agreement had the required "Notice of the Right of Recision", attached thereto. However, they did not notify the student nor was it attached thereto.

The student was not notified by Associates of the following:

1. The total dollar amount of the finance charge.
2. Date upon which the finance charge begins to apply, if this date is different from the date of the transaction.
3. The annual percentage rate (for exception see Reguiation "Z"/228.8(b)(2)(i)(ii).
4. The number, amounts and due dates of payment.
5. Total payments.
6. Amount charged for any default or delinquency.
7. Description of any security held for the loan.

8. Description of any penalty for pre-payment of principal.

9. How the unearned part of the finance charge is calculated in case of pre-payment. Charges deducted from any rebate or refund must be stated.

Associates did not do any of the foregoing, thus violated Regulation "Z". (See Transcript of Hearing dated September 27, 1976.)

(See 12 CFR Section 226, Title 12, Chapter II, Part 226 and Title I Truth & Lending Act and Title V, General Provisions, Consumer Credit Protection Act; Public Law 90-321; 82 Stat. 146 et seq., effective July 1, 1969, overruled by the Trial Court in Transcript of Hearing dated September 27, 1976, pp 76 thru 79, 83 thru 84.

Defendant requested the results from any scientific or handwriting analysis and/or examination made by any expert or experts of any evidence that the prosecution intended to use in the trial of this case and any exculpatory evidence in the possession of, or known to, the prosecution which was favorable to defendant under the latest Supreme Court case of *Brady* v. *Maryland,* which the Court granted but prosecution failed to disclose.

Defendant further requested student acknowledgements as to the authenticity of the students' signatures on the 41 contracts in the indictment, all of which disappeared from the Commonwealth Attorney's office some time prior to the trial of this case. The Court denied the same. (See Transcript of Hearing dated April 27, 1977, p. 11.)

Defendant, in his argument for a directed verdict states as follows:

1. Defendant moved the trial court to direct the jury to find for the defendant at the conclusion of the commonwealth's evidence and/or to dismiss the indictment and again renewed the motion at the end of the case directing the verdict or dismiss the indictment returned against defendant upon grounds that the evidence affirmatively showed that defendant had not committed a crime, as a matter of law, as specified in the 41 count indictment returned on April 16, 1976 and upon further grounds that the commonwealth attorney, at the conclusion of his case, failed to prove the elements of the crime under KRS 516.060. The trial court denied the same.

2. As further grounds for defendant's motion, without any direct evidence, the prosecution relied solely on circumstantial evidence to prove its case. The crime defendant was charged with could not be proved merely showing that at one time defendant had possession of the retail installment contracts and tuition agreements referred to in the indictment, where such instruments passed through several hands before and after delivery and discounted and purchased by Associates. No attempt or proof was established by the prosecution to identify those persons having the "knowledge" of the forged instruments with the intent to defraud, deceive or injure another.

3. As further grounds for defendant's motion, the prosecution stipulated in open court that the students named in the 41 count indictment did not know whether

the defendant had knowledge that the student contracts in question were forged, nor did said students know whether the defendant had the intent to defraud, deceive or injure another by allegedly uttering the contracts to Associates.

4. Defendant states that the prosecution did not prove by direct or circumstantial evidence that defendant had the "knowledge" that the contracts in the 41 count indictment were forged, nor did the prosecution prove that the defendant had the intent to defraud, deceive or injure another. The prosecution only proved that the defendant had taken some of the said contracts to Associates, which alone does not prove the elements that defendant is charged with under KRS 516.060.

5. Defendant further states that any evidence that the prosecution introduced to show a motive for the claim did not prove the elements of the crime under KRS 516.060 against the defendant. (See T. of T., Vol. XIV, pp. 1991 thru 2004. Also see *Van Winkle* v. *Comm. of Ky.,* 7 S. W. 2d 845; *Fain* v. *Comm.,* 154 S. W. 2d 553; also KRS 500.070; *Bullock* v. *Comm.,* 60 S. W. 2d 108; *Hatton* v. *Comm.,* 172 S. W. 2d 564 and *State* v. *Ross* (1909), 55 Or. 450, 42 LRA (N.S.) 601, 104 Pac. 596.)

Furthermore, the prosecution stipulated the first two of the four stipulations and refused to stipulate the two remaining stipulations. (See T. of T., Vol. XIV, pp. 432 thru 435.)

This, in essence, means that prejudicial error was made by the trial court in allowing the jury to hear

the prosecution talk about the elements of the crime which the prosecution failed to prove. This argument should have been done in Chambers instead of before the jury.

Defendant renewed his motion for a directed verdict on grounds that the prosecution failed to identify which of the 32 counts actually belonged to the 16 remaining counts of the indictment and the court also overruled the same. (See T. of T., Vol. XVI, p. 2212.)

Defendant states in his "Motion for New Trial" filed on October 11, 1977 and heard on October 28, 1977, the grounds upon which his rights were violated, a copy of which is in the Appendix, *infra,* for the Court's information. This motion was denied by the trial court on October 28, 1977.

Lastly, the prosecution did not introduce competent and relevant evidence to support its opening and closing statement which appear in the record of this case. (See T. of T., Vol. II, pp. 224 thru 252 for prosecution's Opening Statement and Vol. XIV, pp. 2250 thru 2288 for Closing Statement.)

The sentence and punishment received by Appellant (defendant) in the trial court was far severe and in violation of his rights under the 8th Amendment of the Constitution of the United States.

CONCLUSION

This is a tragic miscarriage of justice and a violation of the substantial rights of Appellant (defendant) under the Constitutions of the United States and the Commonwealth of Kentucky, therefore, the conviction should be reversed, or remanded for a new trial.

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ANDREW H. AVEDISIAN
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Paducah, Kentucky 42001

Attorneys for Appellant or Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certify that forty (40) copies of the foregoing Petition for Writ of Certiorari to Supreme Court of the United States were served upon the Clerk, U. S. Supreme Court, 3rd and Constitution Avenue, N. W., Washington, D. C. 20001, and one (1) copy upon each of the justices of the Supreme Court of Kentucky, Office of the Clerk, Room 209, Frankfort, Kentucky 40601, and three (3) copies upon Honorable Robert F. Stevens, Attorney General, Attorney General's Office, Commonwealth of Kentucky, Frankfort, Kentucky 40601, and one (1) copy upon Honorable Lloyd C. Emery, II, Circuit Judge, Division I, McCracken Circuit Court, Courthouse, Paducah, Kentucky 42001, and one (1) copy upon Honorable J. Brandon Price, Circuit Judge, Division II, McCracken Circuit Court, Courthouse, Paducah, Kentucky 42001, and one (1) copy upon Mark P. Bryant, Esquire, Commonwealth Attorney, Second Judicial District of Kentucky, McCracken County Courthouse, Paducah, Kentucky 42001, and one (1) copy upon Honorable Alfred Obermark, Clerk, McCracken Circuit Court, McCracken County Courthouse, Paducah, Kentucky 42001, by mailing same, postage prepaid, to their last known address on this the _____ day of _____, 1979.

All parties required to be served have been served with the foregoing Petition for Writ of Certiorari.

_____

MICHAEL AVEDISIAN

_____

ANDREW H. AVEDISIAN

Attorneys for Appellant

Supreme Court, U. S.
FILED
NOV 21 1979
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

_____ Term, 19___

No. _____

79-810

JEROME A. (JERRY) KNAPP - - Appellant

versus

COMMONWEALTH OF KENTUCKY - - Appellee

On Appeal from the Supreme Court of the State of Kentucky

APPENDIX

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INDEX

EXHIBIT No. 1

RENDERED: JUNE 12, 1979

SUPREME COURT OF KENTUCKY

78-SC-86-MR

JEROME A. (JERRY) KNAPP - - - - *Appellant*

v.

COMMONWEALTH OF KENTUCKY - - - *Appellee*

Appeal From McCracken Circuit Court
Honorable Lloyd C. Emery, II, Judge
No. 11972

MEMORANDUM OPINION PER CURIAM—AFFIRMING

Jerome A. (Jerry) Knapp was indicted by the McCracken County Grand Jury for 41 counts of criminal possession of a forged instrument in the second degree. KRS 516.060. The case was tried to a jury in the McCracken Circuit Court. Because presentation of evidence on 16 counts consumed over three weeks, the trial court sustained the prosecution's motion to dismiss the remaining 25 counts. The jury found Knapp guilty on all 16 counts and fixed his punishment at five years' imprisonment on each count. The trial court ordered Knapp's sentences on four counts to run consecutively and the sentences on the remaining twelve counts to be served concurrently with the

first four counts, for a total sentence of 20 years. Knapp appeals. We affirm.

Appellant was president and 50% stockholder of a corporation known as Electronic Sales Engineers, Inc., which did business in Paducah, Kentucky, as the Institute of Electronic Technology (IET). IET was a night school offering high school graduates a two-year course in electronics.

Some IET students arranged to pay their tuition in monthly installments payable to IET. In 1972, IET began assigning student tuition agreements to a lending institution known as Associates Financial Services Company of Kentucky, Inc., (Associates). Associates paid IET the face amount of each contract minus a finance charge; the students made their installment payments to IET, which in turn paid Associates.

In 1975, employees of Associates began to notice discounted contracts bearing similar or identical student signatures. Associates contacted Knapp, the IET officer responsible for delivering the contracts to Associates. Knapp attributed the existence of identical contracts to an oversight and reimbursed Associates for those agreements. He explained that many of IET's students did in fact have similar names; Associates therefore retained the agreements bearing similar students' names.

When employees of Associates grew suspicious enough to order an audit on the IET account, it was discovered that 467 installment contracts assigned by IET were currently in the account. Knapp told the auditors that IET had 450 students. The auditors subsequently discovered that 133 students were enrolled at IET and that many contracts delivered to Associates by appellant either named non-existent students or bore the forged signatures of actual students. Sixteen such agreements provided the

basis for Knapp's convictions for criminal possession of a forged instrument in the second degree.

Knapp presents 39 issues in this appeal. He contends there was no search warrant in existence when IET's records were seized, and that therefore none of the seized records should have been admitted into evidence. Appellant claims that the search occurred April 12, 1976, whereas the search warrant was signed April 14. Alternatively, Knapp submits that the warrant was prepared on September 27, 1976. Despite exhaustive efforts by Knapp's trial counsel to prove these contentions at several pre-trial hearings on his numerous motions to suppress evidence, the trial judge ruled that the search was properly carried out on April 14, pursuant to a valid search warrant signed on April 14. We find nothing in the record to support appellant's contentions. County Judge Raymond Schultz testified that he signed the search warrant on April 14, prior to the time the search was made. There is not a shred of evidence that the search occurred on April 12 or any date other than April 14; nor is there any proof that the search warrant was not signed before the search occurred. We hold that the trial court properly overruled Knapp's motions to suppress.

The remaining 38 issues raised by appellant are so frivolous as not to merit discussion. Many of Knapp's contentions are incomprehensively presented in his brief. Rarely does he trouble this court with citations of authority and with only slightly greater frequency does he offer any explanation of his bald assertion that reversible error was committed. Matters suggested in briefs on appeal but unsupported by argument or by citation of authority present nothing for the court's consideration. Grief v. Wood, Ky., 378 S. W. 2d 611 (1964).

The judgment of the trial court is affirmed.

Memorandum Opinion Per Curiam—Affirming

All concur.

Rendered: June 12, 1979.

Attorneys for Appellant:

MICHAEL AVEDISIAN
ANDREW H. AVEDISIAN
1200 Broadway
Paducah, Kentucky 42001

Attorneys for Appellee:

ROBERT F. STEPHENS, Attorney General
JAMES M. RINGO, Asst. Atty. Gen.
PATRICK B. KIMBERLIN, III, Asst. Atty. Gen.
Capitol Building
Frankfort, Kentucky 40601

EXHIBIT No. 2

PETITION FOR REHEARING, MODIFICATION OR EXTENSION

Comes Jerome A. (Jerry) Knapp, defendant-appellant herein (hereinafter called 'Knapp') by his attorneys, and files his Petition for Rehearing limited to ten (10) pages within twenty (20) days from June 12, 1979 (date Opinion of the Supreme Court of Kentucky adversely affecting defendant-appellant Knapp) under Rule 76.32 of the Kentucky Rules of Criminal Procedure, and states as follows:

1. That, Knapp affirms, ratifies, consents and reiterates all of the points and authorities made in appellant's Brief and Reply Brief to the Supreme Court of Kentucky filed heretofore.

2. That, Knapp affirms, ratifies and reiterates all of the Introduction, Statement of the Case, Argument, Conclusion and Appendix with exhibits stated in appellant's Brief and Reply Brief timely filed heretofore on July 31, 1978 and September 28, 1978, respectively.

3. That, grounds for this Petition for Rehearing, Modification or Extension are as follows:

(a) Exhibits were not attached with the affidavit for search warrant.

(b) Affidavit was too broad and indefinite, lacking probable cause that a crime was committed by defendant-appellant Knapp.

(c) The first search warrant was not in existence at the time of the search and seizure of evidence in this case.

(d) The second search warrant which appeared on September 26, 1976 was too late in existence, too broad and indefinite of the evidence searched and seized on April 14, 1976.

(e) The Return was not proper; that, a truckload of evidence searched and seized by the prosecution was too broad, indefinite and immaterial to the issues in this case, especially evidence not in plain view.

(f) Defendant-appellant's Motion for a Bill of Particulars and/or to Dismiss the Indictment for evidence contained in prosecution's third filing drawer ordered by the Court for discovery was not obeyed by the prosecution.

(g) Defendant-appellant's Motion for a Change of Venue to get a fair and impartial trial was denied by the trial court.

(h) Defendant's Motion to Suppress certain inadmissible evidence searched and seized by the prosecution was denied by the trial court.

(i) The handwriting expert from Cincinnati, Ohio, was ready to testify at the trial after examining the contracts in question, but denied to appear and testify as a witness by the trial court.

(j) An indictment does not lie for forgery of an instrument, the existence of which is averred to be uncertain.

(k) The prosecution's violation of Section 106 in Regulation 'Z' and any pertinent sections thereunder, including 12 CFR Sec. 226, Title 12, Chapter 2, Part 226 and Title 1 thereunder and KRS 355.3-406, Secs. 226.4(a)(6).

(l) The prosecution's violation of the Federal Student Privacy Act of 1974, Title 7 USC Sec. 552 (1970) and Title 5 USC. Sec. 552 (Supplemented 1976) and the Freedom of Information Act contained therein.

(m) Non-conformity between the Instructions, Indictment and the Statute under KRS 516.060.

(n) The grounds stated in Knapp's Motion for a new trial filed on October 11, 1977 and heard on October 28, 1977.

(o) The prosecution's violation of defendant-appellant's substantial rights under Title 20 USC 1232(g) in that certain inadmissible evidence was turned over to prosecution without the consent of anyone.

(p) The prosecution's violation of KRS Sections 360.210 through 360.265, more specifically 360.260 stating that state law shall require disclosure of items of information substantially similar to the requirements of any applicable Federal law.

(q) The prosecution's violation of KRS 355.3-115, KRS 355.3-406 and KRS 287.215.

(r) The evidence on an insufficient count held to taint the entire conviction. *U. S. versus DeCavalcamp,* 440 F. 2d 1264, 3rd Circuit (1971).

(s) Certain counts should never have been before the jury because possibility of prejudice must be explored. *U. S.* v. *Dreyfus,* 528 F. 2d 1064, 5th Circuit (1976).

(t) Nowhere in the entire record of this case did the prosecution prove 'knowledge.'

(u) Any other ground not specifically stated heretofore but contained in appellant's Brief, Reply Brief and the record of this case.

All the above grounds, together with Knapp's 38 issues raised but not discussed by this Court, resulted in violation of Knapp's substantial rights under the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Section 10 of the Constitution of Commonwealth of Kentucky and any other pertinent Amendment, Statute or Section promulgated thereunder.

AUTHORITIES

Transcript of Proceedings of Hearings held in Judge's Chambers on September 27, 1976, January 24, 1977, February 3, 1977, April 26, 1977, April 28, 1977, May 3, 1977,

August 30, 1977 and August 31, 1977. Also see *Frank L. Rakas and Lonnie L. King, Petitioners,* v. *State of Illinois,* United States Supreme Court Case Number 77-5781, Argued October 3, 1978, Decided December 5, 1978, cited in 58 L. Ed. 2d 387.

CONCLUSION

The Opinion of the Supreme Court of Kentucky handed down on June 12, 1979 should be reheard, modified or extended because actions taken by the jury, the trial court and the prosecution were a tragic miscarriage of justice and prejudicial to the substantial rights of defendant-appellant Knapp. The conviction should be reversed and/or remanded for a new trial.

Avedisian & Avedisian
By: /s/ Michael Avedisian
By: /s/ Andrew H. Avedisian
1200 Broadway
Paducah, Kentucky 42001
Telephone 502 - 442-4379
Attorneys for Appellant-Defendant
Jerome A. (Jerry) Knapp

Distribution in accordance with Certificate of Service.

EXHIBIT No. 3

MANDATE

The Court being sufficiently advised, delivered herein an opinion per curiam, and it seems there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed; which is ordered to be certified to said court.

July 24, 1979 Appellant's Petition for Rehearing Denied.

A Copy—Attest:
(s) Martha Layne Collins
Clerk

(Seal)
Issued July 24, 1979

EXHIBIT No. 4

ORDER GRANTING STAY OF EXECUTION AND ENFORCEMENT OF MANDATE PENDING APPLICATION TO THE SUPREME COURT OF THE UNITED STATES

On motion of the appellant a stay of execution and enforcement of the mandate under CR 76.44 is granted to and including November 21, 1979, pending appellant's application for Writ of Certiorari to the Supreme Court of the United States, such stay being conditioned upon the execution of bond to the Commonwealth of Kentucky in the amount of $12,500.00 which was the amount of bail pending appeal to this Court, with good and sufficient surety to insure that appellant will appear and satisfy the judgment of the McCracken Circuit Court upon termination of this stay. Any additional stay should be sought in the Supreme Court of the United States.

ENTERED August 23, 1979.

(s) John S. Palmore
Chief Justice

EXHIBIT No. 5

ORDER DENYING RECONSIDERATION

Respondent's motion for reconsideration of the Court's order of August 23, 1979, granting a stay of execution and enforcement of the mandate pending application to the United States Supreme Court for a Writ of Certiorari is denied.

All concur except Clayton, J., who did not sit.

ENTERED September 4, 1979.

(s) John S. Palmore
Chief Justice

EXHIBIT No. 6

McCRACKEN CIRCUIT COURT

DIVISION No. I

Indictment No. 11922

COMMONWEALTH OF KENTUCKY, - - - *Plaintiff,*

v.

JEROME A. (JERRY) KNAPP, - - - *Respondent.*

TRANSCRIPT OF HEARING & SENTENCING

On November 4, 1977, the above cause having been continued from October 28, 1977, for Hearing on Motion for New Trial and sentencing, was held at the hour of 9:00 A.M., cst., in the McCracken County Court House, McCracken Circuit Court, Division I. The Honorable Lloyd C. Emery, Jr., presiding.

The Commonwealth was represented by its attorney, Hon. Mark Bryant, Commonwealth Attorney, Courthouse, Paducah, Kentucky.

The Defendant being present in open Court, was represented by his attorneys, Hon. Andrew Avedisian and Hon. Michael Avedisian, 1200 Broadway, Paducah, Kentucky.

Said hearing commencing in Judge's chamber is as follows:

> The Court: Now, on the Motion for New Trial, that transcript has been read and I can't see anything new added in there, Andy. I don't feel we have committed any errors on it, although we may have, but I don't think so. Since I have been able to find nothing else in it which I think is error, that is overruled.

Mr. A. Avedisian: The only rebuttal that I have to say to that, Judge, is that it is very obvious that the instructions were misleading to the jury, and any portion of the instructions which are misleading are in accordance with the cases we cited as grounds for a motion for a new trial. I do want to state my grounds as to why I feel a motion for a new trial should be granted. There is no way, I believe, the jury could convict this man for eighty years without misunderstanding the jury instructions.

The Court: You know that I used Judge Palmore's instructions. I recently got in an opinion from the Supreme Court in which they ruled six to one. In essence what they are saying is that they proved those instructions.

Mr. A. Avedisian: What I am concerned about is the misunderstanding of the jury of the instructions as we stated in our motion.

The Court: The law is very clear that what the jury set out there is mandatory. I can't increase it, but I can decrease it or probate it in accordance with the law.

Mr. A. Avedisian: In accordance with the case law, if the jury is misled by the instructions, then we are entitled to a new trial regardless of what you are authorized to do.

The Court: Well, I think that is already a matter of record. At any rate, the motion for a new trial is overruled.

Mr. A. Avedisian: Well, it is our contention that the jury did not understand the instructions.

The Court: Now, as far as the sentencing is concerned, I have a pre-sentencing report here which I

think most of the information on here, Jerry, you furnished yourself.

Mr. Bryant: Do you think we should be in the Courtroom for this Judge?

The Court: Well, they are in here by their own choice.

Mr. Bryant: In other words, Andy, you waive your right to have sentencing in the Courtroom.

The Court: I don't think that is a basis for error anyway, but we can move out to the Courtroom.

Mr. Avedisian: We don't wave our right to anything.

(At this point the hearing was recessed, and was reconvened in the Courtroom in open Court, and continued as follows:)

The Court: Now, as I was saying, I have the pre-sentencing report here which I think, Jerry, you furnished most of the information yourself for. It has background history, personal information and so forth that you furnished. You would probably like to look that over yourself. Go ahead. (The Defendant and his counsel inspect the pre-sentencing report.) It has educational history, formal history and personal history, and so forth, as you can see. The Defendant shall be given 35 days jail credit. I see here where it shows your birthday as July 17, 1935, making you age forty-two.

Now, as you know, the statute limits an aggregate sentence of twenty years for this offense, although what is involved here is five years on each of sixteen counts. The law doesn't permit sentencing in accordance with that verdict. For example, the Court can't give a man five years in jail on five charges of one year each, and it is the same thing with aggregate sentencing

on a felony charge. The sentence limitation is twenty years maximum. What I think should be done is reduce any sentence the jury might have given you to twenty years and provide for a twenty year sentence total on it. Also, at this time, the law requires that the defendant be notified of his right to appeal. I believe with this sentence of twenty years, it is appealed directly to the Supreme Court.

Mr. A. Avedisian: So, the sentence is twenty years?

The Court: Yes, five years on each of four counts and the rest to run concurrently with those. The four shall be Count #3, Count #2, count #6 and count #8. As I said, also the statute provides that at the time the Court sets sentence, it must notify the Defendant of his right to appeal, which I am now doing.

Mr. A. Avedisian: I want to put in the record right now that we want to appeal.

The Court: All right, the notice of appeal is to be filed within ten days, and if it is not, the Clerk is directed to put one in here.

Mr. Bryant: Your Honor, at this time I would like to ask that his appeal bond be increased substantially.

The Court: I am going to permit him to remain free on the same bond. He was here throughout all of the hearings and nineteen days of trial. I think he should be permitted to remain on that bond. He will have to change it to an appeal bond in the Clerk's office in the amount of $12,500. You understand that?

Mr. Knapp: Yes, your Honor.

Mr. A. Avedisian: The bond that presently is in existence is from his mother and father. Will they have to sign that over to execute a new bond?

The Court: A $12,500 cash bond, appeal bond. There being no legal cause shown why at this time

this defendant should not be sentenced, Mr. Jerome (Jerry Knapp) is hereby sentenced on counts #2, #3, #6 and #8, five years each to run concurrently and all other counts to run consecutively with those four, for a total of twenty years pursuant to the statutes, and it is hereby ordered and directed that he may execute appeal bond in the amount of $12,500 cash, and shall remain free during appeal on that bond, and also notice of appeal will be filed on his behalf either by his attorneys or by the Clerk.

State of Kentucky
County of McCracken } ss:

I, Patricia A. Burrall, Registered Professional Reporter and Special Court Reporter for the McCracken Circuit Court, Division I, do hereby certify that the foregoing represents a true and accurate transcript of the hearing for motion for new trial and sentencing, as set forth in the caption hereof, and was subsequently transcribed and typewritten by and/or under my direction, all to the best of my ability.

I further certify that I am neither related to, nor employed by any party or attorney to this action, and have no interest in the outcome hereof, financial or otherwise.

Given Under My Hand this the 14th day of March, 1978.

(s) Patricia A. Burrall, RPR
Special Court Reporter
McCracken Circuit Court
Division I

EXHIBIT No. 7

KENTUCKY REVISED STATUTE

516.060 Criminal possession of forged instrument in the second degree

(1) A person is guilty of criminal possession of a forged instrument is the second degree when, with knowledge that it is forged and with intent to defraud, deceive or injure another, he utters or possesses any forged instrument of a kind specified in KRS 516.030.

(2) Criminal possession of a forged instrument in the second degree is a Class D felony.

HISTORY: 1974 H 232, § 137, eff. 1-1-75

Commentary (1974)

Note: See Commentary under 516.050.

Cross References

See Brickley, Kentucky Criminal Law § 16.05

516.030 Forgery in the second degree

(1) A person is guilty of forgery in the second degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument which is or purports to be or which is calculated to become or to represent when completed:

(a) A deed, will, codicil, contract, assignment, commercial instrument, credit card or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status; or

(b) A public record or an instrument filed or required or authorized by law to be filed in or with a public office or public employe; or

(c) A written instrument officially issued or created by a public office, public employe or governmental agency.

Kentucky Revised Statute

(2) Forgery in the second degree is a Class D felony.

HISTORY: 1974 H 232, § 134, eff. 1-1-75

Commentary (1974)

Note: See Commentary under 516.020.

Cross References

See Brickley, Kentucky Criminal Law § 14.12(3), 16.03(2), 16.05, 18.06

Fraudulent use of credit card, presumption as to knowledge of revocation, 434.650

EXHIBIT No. 8

CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENT 4

Unreasonable searches and seizures.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5

Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;

nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

AMENDMENT 8

Bail—Punishment.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT 14

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

EXHIBIT No. 9

CONSTITUTION OF THE COMMONWEALTH OF KENTUCKY

As Adopted September 28, 1891, with Amendments to May 1, 1969

§ 10. **Search warrants; seizure of person; provisions concerning.**—The people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizure; and no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.

Source: Const. 1850, Art. 13, § 11.

§ 11. **Rights of accused in criminal cases; change of venue.**—In all criminal prosecutions the accused has the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor. He can not be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land; and in prosecutions by indictment or information, he shall have a speedy public trial by an impartial jury of the vicinage; but the general assembly may provide by a general law for a change of venue in such prosecutions for both the defendant and the Commonwealth, the change to be made to the most convenient county in which a fair trial can be obtained.

Source: Const. 1850, Art. 2, § 39, Art. 13, § 12.

EXHIBIT No. 10

MOTION FOR NEW TRIAL

Comes defendant, Jerome A. (Jerry) Knapp, by his attorneys, and moves the Court for an Order granting a new trial in the above styled action pursuant to RCr 10.02 of the Kentucky Rules of Criminal Procedure, being filed within five (5) days from entry of the judgment of conviction on October 6, 1977, and in support of said motion, states as follows:

1. That, the Court's Instructions to the jury were in error based upon the grounds that Instructions No. 1 through 16 state:

> "If you find the defendant guilty *under this instruction,* you will fix his punishment at confinement in a penitentiary for not less than one (1) year nor more than five (5) years, in your discretion", (Emphasis Supplied)

whereas, the Court should have instructed the jury:

> "If you find the defendant guilty *under this count,* you will fix his punishment at confinement in the penitentiary for not less than one (1) year nor more than five (5) years, in your discretion", (Emphasis Supplied)

which, in effect, mislead and confused the jury to believe that the maximum sentence under all sixteen (16) counts would be five (5) years in prison. Because of the error, the jury has sentenced this defendant to a term of eighty (80) years in prison, thinking that they were sentencing the defendant to a maximum of five (5) years in prison.

2. That, the Court's Instructions were further in error in that the Instructions did not conform to the allegations in the indictment. The indictment states as follows:

> "On or about the ____ day of _____, 19____, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of _____, and obtaining thereby from said employee the sum of $_____, against the peace and dignity of the Commonwealth of Kentucky",

however, the Court's Instructions to the jury confused and mislead them to believe that the defendant was guilty if defendant had the contract in his possession with the intent to defraud, deceive or injure Associates Financial Services *or some other person or persons.* If the allegations in the indictment had not been proved to the satisfaction of the jury with respect to Associates, then defendant had to be guilty because the Court's Instructions went beyond the allegations contained in the indictment.

3. That, moreover, the Court's Instructions were further in error in that Instruction No. 17 stated:

> "If you believe from the evidence beyond a reasonable doubt that the defendant is guilty *under any of the preceding Instructions* but that he performed or caused to be performed such acts in the name of or in behalf of a corporation, then he shall be deemed to be guilty to the same extent as if such acts were performed in his own name or in his own behalf", (Emphasis Supplied)

whereas the Instruction No. 17 should have stated:

> "* * * under any of the preceding counts * * *",

the result being that the jury was further mislead and confused by the Instructions.

4. That, the Court's Instructions were further in error in that the definition of reasonable doubt confused and mislead the jury. The Court's Instruction No. 18 read as follows:

> "Reasonable doubt.
> If *upon the whole case* you have a reasonable doubt as to the defendant's guilt, you shall find him not guilty. The term "reasonable doubt" as used in these Instructions means a substantial doubt, a real doubt, in that you must ask yourself not whether a better case might have been proved, but whether, after hearing all the evidence, you actually doubt that the defendant is guilty",

whereas, the Court's Instructions should have read:

> "Reasonable doubt.
> If, *as to each count,* you have a reasonable doubt as to the defendant's guilt, you shall find him not guilty. The term "reasonable doubt" as used in these instructions means a substantial doubt, a real doubt, in that you must ask yourself, after hearing all the evidence, that your mind is left in such condition that you cannot say that you have an abiding conviction, to a moral certainty, of the defendant's guilt." (Emphasis Supplied)

5. That, the Court failed to charge the jury with an Instruction, as follows:

> "The fact that you may find the accused guilty or not guilty as to one of the counts charged, should not control your verdict as to any of the other counts so charged."

6. That, the Court failed to charge the jury with a cautionary Instruction that it is improper for the prosecutor to suggest that he dismissed counts simply to save time, and thereby to imply that he has evidence of other wrongdoing.

7. That, as a consequence of all the foregoing, the action by the jury was a tragic miscarriage of Justice and prejudicial to the defendant. Such practice cannot be sanctioned when the life or liberty of a citizen is involved.

8. That, the Court charged the jury with its Instructions over timely objections by the defendant.

9. That, the Court allowed inadmissible evidence into the record of this case, over timely objections of the defendant.

10. That, the Commonwealth failed to prove the elements of the crime beyond a reasonable doubt.

Dated this 11th day of October, 1977.

Avedisian & Avedisian
(s) Michael Avedisian
(s) Andrew Avedisian
1200 Broadway
Paducah, Kentucky 42001
Telephone 502-442-4379
Attorneys for Defendant

NOTICE OF MOTION

PLEASE TAKE NOTICE that the foregoing Motion will be brought on for hearing before the judge of McCracken Circuit Court, Division No. I, on Tuesday, October 11, 1977 at the hour to be set by the Judge, or as soon thereafter as counsel can be heard.

(s) Michael Avedisian

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion was this day served upon Hon. Mark Bryant, Special Prosecutor for the Commonwealth of Kentucky, Courthouse, Paducah, Kentucky 42001, by personally delivering same, to his last known address on this 11th day of October, 1977.

(s) Michael Avedisian

TRANSCRIPT OF HEARING ON MOTION FOR NEW TRIAL

A hearing was held on the Defendant's Motion for a New Trial on the 28th day of October, 1977, at the hour of 10:00 A.M. cdt. in the chambers of the Honorable Lloyd Emery, Judge, McCracken Circuit Court, Division I., McCracken County Courthouse, Paducah, Kentucky. The Defendant was present in open Court, and was represented by his attorneys, Hon. Michael Avedesian, and Hon. Andrew Avedesian, 1200 Broadway, Paducah, Kentucky. The Commonwealth was represented by Hon. Mark Bryant, Acting Commonwealth Attorney, Paducah, Kentucky.

Reported by:
Patricia A. Burrall, RPR
Special Court Reporter
Burrall Court Reporting Svs.
R. R. #3, Laurel Lane
Calvert City, Kentucky

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The Court: I believe your Motion is fairly self-explanatory, but I suppose you want to comment on it, and I suppose that you should. Go ahead, Mr. Avedesian.

Mr. Michael Avedesian: May it please the Court; the defendant has filed a motion for new trial under Criminal Rule 10.02, upon the grounds, A) that the defendant did not

have a fair trial, and B) in the interest of justice, a new trial should be granted. The Motion was timely filed pursuant to Criminal Rule 10.06, within five days after the return of the verdict.

As further grounds for our Motion for New Trial, the defense wants to state the following:

A. Substantial error was made in the Court's instructions which mislead and confused the Jury as to the guilt or innocence of the defendant, and upon the given sentence, by the Jury, was prejudicial to the defendant. The Jury misunderstood the Court's instructions. The Court's instructions to the Jury were as follows: "If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than one year and nor more than five years, in your discretion," whereas the Court should have instructed, "If you find the defendant guilty under this count. . . ." This,

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in effect, mislead and confused the Jury and they just did not understand.

B. Substantial error was made in the Court's instruction because there was no conformity of the instructions to KRS 516.060—that is the statute, and the indictment, all of which were prejudicial to the defendant. That is, the conformity was not between the instruction, the statute and the indictment. The instructions should follow substantially the language in the indictment. In our case, the language in the instructions had no facsimile or similiarity to the language in the indictment. In support of that proposition, we cite *Hunter* v. *Commonwealth of Kentucky,* 239 S. W. 2d 993, 1951; *Maddox* v. *Commonwealth of Kentucky,* 349 S. W. 2d 686, 1961; *Beets* v. *Commonwealth of Kentucky,* 437 S. W. 2d 496, 1969; and *Strong* v. *Commonwealth of Kentucky,* 507 S. W. 2d 691, 694, 1974. There

again, the indictment read, "On or about (blank) day of (blank), 19 (blank), in McCracken County, Kentucky, the above named defendant committed second degree criminal possession of a forged instrument, by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail contract and tuition agreement bearing the forged signature of (blank), and obtained therefrom said employee the

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sum of (blank) dollars, against the peace and dignity of the Commonwealth." The Court's instructions confused and misled the Jury to believe that the defendant was guilty if the defendant had the contracts in his possession with the intent to defraud, deceive or injure Associates Financial Services, or some other person or persons. In other words, the Court's instructions went beyond the language contained in the indictment and the statute.

C. Substantial error was made in the Court's instructions because there was no conformity of the instructions to the issues, based upon the evidence introduced by the prosecution, which again was prejudicial to the defendant. The instructions should have been related and confined to the issues germane to the evidence which was introduced by the prosecution. Instead of proving elements of the crime under KRS 516.060, the prosecution bases its case on the amount of money involved in the 467 contracts discounted for $1,084,000 between I.E.T. and Associates over a four-year period, and not the subject matter of the indictment. It was not limited to the subject matter of the indictment. This evidence was wholly and totally inadmissible, and prejudicial to the substantial rights of the defendant. The door was opened by the prosecution

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in his opening statement and in his closing statement,

which placed the defendant in jeopardy, and in a position to have to rebut.

D. Substantial error was made in the Court's instructions because the Jury should not have been instructed upon a theory of the case not sustained by the evidence, or upon a theory opposed to the evidence. In this connection, there was no evidence introduced that the defendant had "knowledge" of a forged instrument, nor was there any proof or even a scintilla of evidence that the defendant forged the sixteen contracts in question, or that he knew who forged the contracts, which were the subject matter of the indictment. The prosecution based its whole case on Associates Financial Service's loss of $515,000 allegedly sustained over a four-year period and allegedly resulting from the gross business over a four-year period of $1,084,000, and the defendant's value of the I.E.T. stock of $300,000, which Associates' own witness claims was left off the corporation balance sheet as a part of the scheme when, in fact, it should not have been on the corporate balance sheet at all, nor should this kind of testimony have been admitted into the evidence because the jury was interested more about where the money went than whether the

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defendant committed the crime. The prosecution further based its case upon a pay-off agreement which was never executed by either I.E.T. or Associates Financial Services, reflecting amounts accrued over a four-year period, and the Associates' own witnesses admitted on the stand that they did not know where the figures came from. One witness gave three inconsistent statements as to where the figures came from. Yet, the prosecution used this inadmissible evidence to persuade the jury to convict the defendant on sixteen counts remaining in the indictment. Thus, the jury should not have been instructed on a theory

of the case not sustained by the evidence, or upon a theory opposed to the evidence. In this regard, Your Honor, we cite *Couch* v. *Commonwealth of Kentucky,* 479 S. W. 2d 636, 1972 case; *Crum* v. *Commonwealth of Kentucky,* 144 S. W. 2d 1047, 1940 case.

E. Where the Defendant denied having "knowledge" of a forged instrument with the intent to defraud, deceive or injure another, the instructions should have been confined to that issue. However, in our case at bar, the prosecution introduced evidence on all forty-one counts of the indictment, and the jury heard this evidence, saw it on the blackboard, and during recess time went to the blackboard and compared

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figures with one another, statements with one another, and thereafter, the prosecution dismissed twenty-five counts, giving its reasons to the Court and Jury that it was in the interest of saving trial time which, of course, resulted in implying to the Jury that he had proven his sixteen counts of other wrong doing. This was highly prejudicial to the rights of the defendant. In this regard, the Court should have given a "cautionary instruction" stating to the Jury that it was improper for the prosecutor to state that he was dismissing the 25 counts simply to save time, and thereby implied that he had evidence of other wrong doing. This was substantial error and wholly prejudicial to the defendant. In this regard, we want to cite *U. S.* v. *Somers,* 496 Fed. 2d 723, 3rd Circuit, 1974, certiorari denied 419 U. S. 832.

F. Substantial error was made in the Court's instructions because of the confusing and misleading definition of reasonable doubt which the Court applied to the case as a "whole," instead of restricting it to each count. Therefore, the Jury misunderstood the Court's instructions and was

confused by the implications derived from the wording of the instructions. The Court gave as an instruction on reasonable doubt, the following: "If upon the whole case you have a reasonable doubt as to the defendant's guilt . . . .".

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Whereas, the Court's instruction should have been "Reasonable doubt: if, as to 'each count' you have a reasonable doubt as to the defendant's guilt. . . .". In this connection, Your Honor, we have the case of *Fitzpatrick* v. *Commonwealth of Kentucky,* 53 S. W. 2d 221.

G. The Court failed to charge the Jury with an instruction which should have stated "the fact you may find the accused guilty or not guilty as to one of the counts charged, should not control your verdict as to any of the other counts charged," which, of course, the omission again misled the Jury to believe that the maximum sentence on all of the counts was five years instead of actually being eighty years. This omission was highly prejudicial to the substantial rights of the Defendant. Therefore, the first instruction should have been ". . . counts one through sixteen" instead of the whole case.

H. The Court allowed inadmissible evidence in the record of this case throughout the trial over timely objections by the defense, and at the close of the defendant's case, the Court erroneously admitted every exhibit which was marked for identification purposes only, which error was substantial and prejudicious.

I. The prosecution failed to prove the elements

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of the crime under KRS 516.060(1) knowledge that the documents were forged, and (2) with the intent to defraud, deceive or injure another, (3) the utterance and possession of the specific retail contracts which were the sixteen con-

tracts in question. In other words, even under the "uttering and possession" the prosecution didn't even prove that the defendant had actual possession, and uttered those specific retail contracts. The only thing that he established was that it was the normal course for the defendant to handle all of the discounting of contracts over a four-year period. Thus, as a result, the issues settled by the verdict were wholly immaterial and the Jury's verdict was palpably against the evidence.

J. The trial Court should have granted defendant's motion for a directed verdict at the close of the prosecution's case based upon the fact the prosecution failed to prove every element of this crime. However, the Court denied same.

K. The Court moreover instructed the Jury under Instruction #17 in substantial error which stated as follows: "If you believe from the evidence beyond a reasonable doubt that the defendant is guilty under any of the preceding instructions, but that he performed or caused to be performed such acts in the name of or

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in behalf of the corporation, then he shall be deemed to be guilty the same extent as if such acts were performed in his own name or in his own behalf." There again, the Court's instructions went beyond the language of the indictment and the language in the statute, and it should have been limited to the preceding counts, instead of the preceding instructions, the result being highly prejudicial to the rights of the defendant.

Finally, Your Honor, the United States Supreme Court in *U. S.* v. *Cooper,* 464 F. 2d 648, 10th Circuit, 1972, certiorari denied 409 U. S. 1107, the Court held that it may be assumed that the Jury complied with the Court's instructions to disregard the evidence about counts that had been

dismissed by order of the Court. However, they further held that the jury cannot and must not convict on assumption. In the case at bar, the evidence was heard on all dismissed counts by Associates' own witnesses who were testifying for the prosecution about 467 retail contracts discounted for a total of $1,084,000 over a four-year period by I.E.T. with Associates Financial Services from the year 1972 to 1976, when in fact, those witnesses should have been testifying only to those sixteen remaining counts of the indictment allegedly forged

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and allegedly discounted between January, 1975, to February, 1976, which were the subject matter of the indictment. In the case of *U. S.* v. *DeCavalcampe,* 440 F. 2d 1264, 3rd Circuit, 1971, the Court held that the evidence on an insufficient count was held to taint the entire conviction. Now, the insufficient count in our case at bar was the count on Ricky Lawson. There is no question about that count. There is a question in our minds as to why the remaining twenty-four counts were dismissed and the reasons given by the prosecution. But, in the case at bar, the evidence on the insufficient count, Count #1, Ricky Lawson, which was dismissed first, tainted the entire conviction on the sixteen remaining counts after another twenty-four counts were dismissed by the prosecution. Likewise, in *U. S.* v. *Dreyfus,* 520 F. 2d 1064, 5th Circuit, 1976, the Court held that when it is determined that certain counts should never have been before the jury, the possibility of prejudice must be explored.

Finally, Criminal Rule 9.26 of the Kentucky Rules of Criminal Procedure state, "Conviction shall be set aside upon motion in trial Court or judgment reversed on appeal for any error or defect when, upon consideration of the

whole case, the Court is satisfied that the substantial rights of the defendant have been

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prejudiced." Your Honor, because of all of the errors set by the defense, and with all due respect to this honorable Court, the action taken by the Jury was a tragic miscarriage of justice and was prejudicial to the substantial rights of the defendant. The errors set out by the defense were substantial errors. Such practice, your Honor, should not be sanctioned where the life or liberty of a human being is involved.

Thank you, that is all for the defense.

The Court: Do you have any response, Mr. Bryant?

Mr. Bryant: To my knowledge, each of those issues were covered prior to the jury verdict, and I don't have anything else to say.

The Court: Do you have this in written form, Mr. Avedesian?

Mr. Avedesian: No, sir, but we can get it for you.

The Court: All right, I will sugest that the simplest thing to do is have the Reporter transcribe it.

Mr. Avedesian: All right, fine.

The Court: What I anticipate doing here is, I will continue this for the purposes of getting a written transcript of your argument which had the citations in it, and I would like to look it over. What we will do is continue this hearing to next Friday, November 4, 1977, at the hour of 9:00. The continuance would be limited really to my giving a decision, and should the decision

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be unfavorable to the defendant, the sentencing will follow on that day.

* * * * * * *

STATE OF KENTUCKY
COUNTY OF McCRACKEN } ss;

I, PATRICIA A. BURRALL, Registered Professional Reporter and Special Court Reporter for McCracken Circuit Court, Division I., do hereby certify that the foregoing constitutes a true, accurate and complete transcript of the Hearing on Motion for New Trial, held at the time and place and in the manner aforesaid, and taken by me in shorthand, subsequently transcribed and typewritten by me and/or under my direction, all to the best of my ability.

I further certify that I am neither related to, nor employed by any party or attorney to this action, and have no interest, financial or otherwise, in the outcome hereof.

GIVEN UNDER MY HAND this the 29th day of October, 1977.

Patricia A. Burrall, RPR
Special Reporter, McCracken Circuit
Division I.

EXHIBIT No. 11

MOTION FOR DIRECTED VERDICT AND/OR MOTION TO DISMISS

Comes defendant, Jerome A. (Jerry) Knapp, by his attorneys, and moves the Court to direct the Jury to find for said defendant at the conclusion of the Commonwealth's evidence and/or dismiss the indictment returned against said defendant herein the above styled action, upon grounds that the evidence affirmatively shows that said defendant has not committed a crime, as a matter of law, as specified in the Forty (40) Count Criminal Indictment No. 11922, returned on April 16, 1976, and upon further grounds that the Commonwealth Attorney, at the conclusion of his case, has failed to prove the elements of the crime under KRS 516.060.

As further grounds for said motion, without any direct evidence, the Commonwealth has relied solely on circumstantial evidence to prove its case. The crime defendant is charged with cannot be established by merely showing that at one time defendant had possession of the Retail Installment Contracts and Tuition Agreements referred to in said Forty (40) Count Criminal Indictment, where such instruments passed through several hands after delivery but before being discounted by Associates Financial Services Company of Kentucky, Inc. (Associates), and no attempt or proof has been established by the Commonwealth Attorney to identify those persons having knowledge of the forged instruments and the intent to defraud, deceive or injure another.

As further grounds for defendant's motion, the Commonwealth Attorney stipulated in open Court that the students named in said Forty (40) Count Criminal Indictment did not know whether the defendant had knowledge

that said contracts in question were allegedly forged, nor did said students know whether defendant had the intent to defraud, deceive or injure another by allegedly uttering the contracts referred to in said Criminal Indictment to Associates.

As further grounds, defendant states that the Commonwealth has not proved by direct or circumstantial evidence that the defendant had knowledge that the contracts in the Forty (40) Count Criminal Indictment were forged, nor did the Commonwealth prove that the defendant had the intent to defraud, deceive or injure another. Defendant further states that the Commonwealth has only proved that the defendant had taken some of said contracts to Associates, which alone does not prove the elements the defendant is charged with under KRS 516.060.

Defendant further states that any evidence that the Commonwealth introduced to show a motive for the crime does not prove the elements defendant is charged with in KRS 516.060. In support of defendant's motion, defendant cites as authority the case of *Van Winkle* v. *Commonwealth*, 7 S. W. 2d 845 wherein the Court held:

> "In the absence of direct evidence, and where circumstantial evidence alone is relied upon, the crime of forgery cannot be established by merely showing that at one time the defendant had possession of the instrument later found to be forged, where such instrument passed through other hands before reaching the injured person and no attempt is made to identify those persons."

In further support, defendant cites *Fain* v. *Commonwealth*, 154 S. W. 2d 553 wherein the Court held:

> "In prosecution for uttering a forgery, plea of not guilty placed on Commonwealth the burden of proving

each and every allegation of the indictment necessary to the commission of the offense charged."

KRS 500.070 requires that the Commonwealth prove every allegation beyond a reasonable doubt.

Defendant further cites *Bullock* v. *Commonwealth,* 60 S. W. 2d 108 where the Court held:

"Circumstantial evidence to justify a conviction must point unerringly to the accused's guilt, and it must do more than create a suspicion of guilt. To be sufficient to sustain a conviction it must exclude every reasonable hypothesis of innocence. If the circumstances tending to show his guilt are as consistent with the defendant's innocence as with his guilt, they are insufficient. To be sufficient such evidence must be consistent with every reasonable inference of his guilt and inconsistent with his innocence."

Defendant further cites *Hatton* v. *Commonwealth,* 172 S. W. 2d 564, where the Court held:

"In prosecution for knowingly and fraudulently uttering a forged check, Commonwealth was required to establish from evidence beyond a reasonable doubt that at time accused uttered check he knew it was a forgery."

Defendant further cites 33 A.L.R. 787 which states:

"In order that defendant shall be held liable for so planning and conducting the business of the company as to result in fraudulent misappropriation or conversion of the money of Roemer & Miller entrusted to the corporation, it must, we think, be charged and shown that such course of business was either in its essential characteristics illegal, and devised and carried on for the purpose of effecting a criminal result;

or that, with the knowledge and under the direction of defendant, it was so carried on in a particular case as to effect such result. The court reversed the judgment of conviction, remarking that the difficulty with the theory on which the case was tried was that a conviction for a crime was sanctioned, with no evidence of a criminal act or criminal intent on the part of the defendant."

And in *State* v. *Ross* (1909), 55 Or. 450, 42 L.R.A., N.S.) 601, 104 Pac. 596, it was said:

"There is no doubt that if the money had been embezzled from the trust company, or applied in any way not intended by the company, or not for its benefit, by any subordinate then Ross could not be held criminally liable, unless he participated in such diversion thereof; but that is not this case."

Avedisian & Avedisian
By (s) Michael Avedisian
1200 Broadway
Paducah, Kentucky 42001
Attorneys for Defendant

EXHIBIT No. 12

INDICTMENT

No. 11922
KRS 516.060 (Cts. 1 thru 41)
Second-Degree Criminal Possession of Forged Instrument (All Class D. Felony)

Count 1:

The grand jury charges:

On or about the 18th day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Rick Lawson and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 2:

The grand jury further charges:

On or about the 30th day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of D. Johnson, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 3:

The grand jury further charges:

On or about the 30th day of December, 1975, in McCracken County, Kentucky, the above named defendant

committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of L. Coates, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 4:

The grand jury further charges:

On or about the 10th day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Alan Duhs, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 5:

The grand jury further charges:

On or about the 26th day of November, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Glenn Cooper, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 6:

The grand jury further charges:

On or about the 16th day of November, 1975, in McCracken County, Kentucky, the above named defendant

committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Wade Gilland, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 7:

The grand jury further charges:

On or about the 13th day of November, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Tom Bolton, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 8:

The grand jury further charges:

On or about the 19th day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of W. Catron, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 9:

The grand jury further charges:

On or about the 20th day of November, 1975, in McCracken County, Kentucky, the above named defendant

committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Dawson Nuszbaum, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 10:

The grand jury further charges:

On or about the 31st day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of J. Ward, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 11:

The grand jury further charges:

On or about the 26th day of November, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Lee Glenn, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 12:

The grand jury further charges:

On or about the 10th day of December, 1975, in McCracken County, Kentucky, the above named defendant

committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Ken Harman, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 13:

The grand jury further charges:

On or about the 24th day of November, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Steven Mosley, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 14:

The grand jury further charges:

On or about the 10th day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of A. Morrow, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 15:

The grand jury further charges:

On or about the 18th day of December, 1975, in McCracken County, Kentucky, the above named defendant

committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Lynn Cothron, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 16:

The grand jury further charges:

On or about the 31st day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of W. Neal, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 17:

The grand jury further charges:

On or about the 13th day of November, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Ray Allen, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 18:

The grand jury further charges:

On or about the 13th day of November, 1975, in McCracken County, Kentucky, the above named defendant

committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of William Allen, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 19:

The grand jury further charges:

On or about the 15th day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of S. Ray, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 20:

The grand jury further charges:

On or about the 20th day of November, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Bill Johnson, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 21:

The grand jury further charges:

On or about the 31 day of December, 1975, in McCracken County, Kentucky, the above named defendant

committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of F. Meadors, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 22:

The grand jury further charges:

On or about the 30th day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of L. Brown, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 23:

The grand jury further charges:

On or about the 30th day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Perry Brown, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 24:

The grand jury further charges:

On or about the 20th day of January, 1976, in McCracken County, Kentucky, the above named defendant

committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Arlington Terry, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 25:

The grand jury further charges:

On or about the 24th day of November, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Steven Morris, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 26:

The grand jury further charges:

On or about the 26th day of November, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Ron Meadors, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 27:

The grand jury further charges:

On or about the 20 day of January, 1976, in McCracken County, Kentucky, the above named defendant

committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of R. Essner, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 28:

The grand jury further charges:

On or about the 26th day of November, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Ray Clark, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 29:

The grand jury further charges:

On or about the 19th day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of L. Wiman, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 30:

The grand jury further charges:

On or about the 20 day of January, 1976, in McCracken County, Kentucky, the above named defendant

committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of L. Cunningham, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 31:

The grand jury further charges:

On or about the 16 day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of E. Mars, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 32:

The grand jury further charges:

On or about the 30 day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Steve Mars, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 33:

The grand jury further charges:

On or about the 10 day of December, 1975, in McCracken County, Kentucky, the above named defendant

committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Dean Metcalf, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 34:

The grand jury further charges:

On or about the 30th day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Gene Weller, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 35:

The grand jury further charges:

On or about the 20th day of January, 1976, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Anthony Guthrie, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 36:

The grand jury further charges:

On or about the 10th day of December, 1975, in McCracken County, Kentucky, the above named defendant

committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Bob McGuire, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 37:

The grand jury further charges:

On or about the 26th day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Wilson Hobbs, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 38:

The grand jury further charges:

On or about the 15 day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of E. Steel, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 39:

The grand jury further charges:

On or about the 30 day of December, 1975, in McCracken County, Kentucky, the above named defendant

committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Dale Jones, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 40:

The grand jury further charges:

On or about the 23 day of January, 1976, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Dale Rodgers, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

Count 41:

The grand jury further charges:

On or about the 16 day of December, 1975, in McCracken County, Kentucky, the above named defendant committed Second-Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Financial Services Company of Kentucky, Inc., a retail installment contract and tuition agreement bearing the forged signature of Mike Griffith, and obtaining thereby from said employee the sum of $2,486.25, against the peace and dignity of the Commonwealth of Kentucky.

A True Bill
(s) (Not Legible)
Foreman

EXHIBIT No. 13

INSTRUCTIONS TO THE JURY

You, the Jury, shall apply what you believe to be the true facts of this case to the law as set forth by the Court in the following Instructions.

No. 1

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about December 30, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 2-a) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of D. Johnson;

b) That in fact D. Johnson had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that D. Johnson had not signed or authorized his signature thereon;
AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty *under this Instruction,* you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

Instructions to the Jury

No. 2

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about December 30, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 3-b) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of L. Coates;

b) That in fact L. Coates had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that L. Coates had not signed or authorized his signature thereon;
AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 3

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about November 16, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract

(Commonwealth Exhibit No. 6-b) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of Wade Gilland;

b) That in fact Wade Gilland had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that Wade Gilland had not signed or authorized his signature thereon;
AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 4

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about December 19, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 8-a) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of W. Catron;

b) That in fact W. Catron had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that W. Catron had not signed or authorized his signature thereon;
AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 5

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That is this County on or about November 20, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 9-b) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of Dawson Nuszbaum;

b) That in fact Dawson Nuszbaum had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that Dawson Nuszbaum had not signed or authorized his signature thereon;
AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 6

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about December 10, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 14-b) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of A. Morrow;

b) That in fact A. Morrow had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that A. Morrow had not signed or authorized his signature thereon;
AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 7

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about December 31, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 16-a) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of W. Neal;

b) That in fact W. Neal had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that W. Neal had not signed or authorized his signature thereon;
AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 8

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about December 31, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 21-b) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of F. Meadors;

b) That in fact F. Meadors had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that F. Meadors had not signed or authorized his signature thereon;
AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 9

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about December 30, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 22-b) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of L. Brown;

b) That in fact L. Brown had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that L. Brown had not signed or authorized his signature thereon;
AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 10

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about December 30, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 23-b) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of Perry Brown;

b) That in fact Perry Brown had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that Perry Brown had not signed or authorized his signature thereon;
AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 11

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about November 26, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 26-b) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of Ron Meadors;

b) That in fact Ron Meadors had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that Ron Meadors had not signed or authorized his signature thereon;

AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 12

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about January 20, 1976, and before the finding of the Indictment herein, he had in his possession a retail installment contract

(Commonwealth Exhibit No. 27-b) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of R. Essner;

b) That in fact R. Essner had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that R. Essner had not signed or authorized his signature thereon;

AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 13

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about January 20, 1976, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 30-b) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of L. Cunningham;

b) That in fact L. Cunningham had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that L. Cunningham had not signed or authorized his signature thereon;
AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 14

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about December 30, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 32-b) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of Steve Mars;

b) That in fact Steve Mars had not signed the said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that Steve Mars had not signed or authorized his signature thereon;
AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 15

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about December 30, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 34-b) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of Gene Weller;

b) That in fact Gene Weller had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that Gene Weller had not signed or authorized his signature thereon;
AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 16

You will find the defendant guilty if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

a) That in this County on or about December 30, 1975, and before the finding of the Indictment herein, he had in his possession a retail installment contract (Commonwealth Exhibit No. 39-b) of (Institute of Electronic Technology) (Electronic Sales Engineers) purporting to bear the signature of Dale Jones;

b) That in fact Dale Jones had not signed said contract and had not authorized his name to be signed thereon;

c) That the defendant knew that Dale Jones had not signed or authorized his signature thereon;

AND

d) That defendant had the contract in his possession with the intention to defraud, deceive or injure Associates Financial Services or some other person or persons.

If you find the defendant guilty under this instruction, you will fix his punishment at confinement in the penitentiary for not less than 1 year nor more than 5 years, in your discretion.

No. 17

If you believe from the evidence beyond a reasonable doubt that the defendant is guilty under any of the preceding Instructions but that he performed or caused to be performed such acts in the name of or in behalf of a corporation, then he shall be deemed to be guilty to the same extent as if such acts were performed in his own name or in his own behalf.

No. 18

Reasonable doubt.

If upon the whole case you have a reasonable doubt as to the defendant's guilt, you shall find him not guilty. The

term "reasonable doubt" as used in these Instructions means a substantial doubt, a real doubt, in that you must ask yourself not whether a better case might have been proved, but whether after hearing all the evidence, you actually doubt that the defendant is guilty.

No. 19

Unanimous verdict.

The verdict of the Jury must be unanimous and be signed by one of you as Foreman. You may use one of the forms provided at the end of these Instructions in writing your verdict.

This the 6th day of October, 1977.

(s) Lloyd C. Emery
Judge, McCracken Circuit Court
Division I

EXHIBIT No. 14 (COURT'S EXHIBIT #1)

AFFIDAVIT FOR SEARCH WARRANT

The affiant, Albert Jones, states that he is the duly elected and acting Commonwealth's Attorney for the Second Judicial District of Kentucky at Paducah, McCracken County, Kentucky; that on April 12, 1976, Robert Joseph Grant, an accountant for Associates Financial Services of Kentucky, Inc., a corporation, told the affiant the following: "that his said employer had currently on file 467 active unpaid student tuition payment agreements which it had bought at discount from Jerry A. Knapp, President, of Electronic Sales Engineers, Inc., which operates the Institute of Electronic Technology school located in the 1301 Building at 1301 Broadway, Paducah, McCracken County,

Kentucky, which offices are located on the left side of the building as one enters the front of the building by way of the Broadway Street entrance; that said agreements were assigned by said Knapp at purchase to his said employer and represent as of February 10, 1976, a total gross indebtedness of $1,084,671.00; that said Knapp also delivered student data sheets attached to each contract when he delivered said contracts to the purchaser; and that each agreement was purchased on the representation of said Jerry Knapp that there was a student by that name who signed said Agreement currently enrolled at the Institute of Electronic Technology on the date the agreement was assigned and purchased; and that on February 1, 1976, Jerry Knapp told him a count of 129 students were in attendance at said school on January 27, 1976, but that 132 were scheduled to be there;"

The affiant states that on April 13, 1976, said Robert Joseph Grant delivered to the affiant said 467 agreements, certain exact copies of which are attached hereto and made a part of this affidavit and are a representative number of said agreements with student data sheets which were attached to each agreement when they were assigned and purchased; that the affiant on April 13, 1976, interviewed Wade Gilland, Lee Glenn and W. Neal, and showed each of said persons the said attached agreements; that each of said persons told the affiant that he was a student at said school but that his signature had been forged on the said attached agreement and he had not signed it; that affiant has examined on April 13, 1976, a representative number of said purchased agreements delivered to him and exact copies of a representative number of which are attached hereto and marked "Exhibit B" and made a part of this affidavit, and it is obvious they are signed in the same handwriting as to the signature of the purported student;

that therefore affiant believes that said Associates Financial Services of Kentucky, Inc., a corporation, has purchased from said Jerry Knapp 467 agreements which are forgeries or represent agreements on non-existent students; that said contracts represent a large sum of money being paid to said Jerry Knapp for said assignments and purchased at the date of assignment; that the location and distribution of said sums of money obtained by the said of said agreements by Jerry Knapp and the exact student attendance lists of each student and records of each student at said school are evidence of the crime of Criminal Possession of a Forged Instrument by him and will reveal the location of the money which is the fruits of said crime obtained by said Knapp; that on April 12, 1976, said Robert Joseph Grant stated to affiant he was on said premises of the said Institute of Electronic Technology on January 30, 1976, and saw some copies of student tuition agreements; cancelled checks, bank deposit lists, check book stubs, school student lists and attendance records of said Institute of Electronic Technology; that affiant makes this affidavit for the purpose of having a search warrant issued by the Court to the Sheriff of McCracken County, Kentucky, to search for and seize said items mentioned above.

(s) Albert Jones

Subscribed and sworn to before me by Albert Jones on this the 14th day of April, 1976.

(s) Raymond C. Schultz, Judge
McCracken County Quarterly Court

EXHIBIT No. 15 (COURT'S EXHIBIT #3)

SEARCH WARRANT

THE COMMONWEALTH OF KENTUCKY

TO: The Sheriff of McCracken County, Kentucky or any other duly authorized peace officer in the Commonwealth of Kentucky:

It appearing from the oath and affidavit of Albert Jones, Commonwealth's Attorney, Second Judicial District of Kentucky, Paducah, McCracken County, Kentucky, that there is probable cause to believe and that he does believe that there is located in the rooms and offices of the Institute of Electronic Technology in the 1301 Building at 1301 Broadway Street, in Paducah, Kentucky, which offices and rooms are on the left hand side of said building as you enter the front door of the Broadway Street entrance, the following property which constitutes evidence of a crime and fruits of a crime:

(1) Bank deposit records of the Institute of Electronic Technology account and the account of Jerry A. Knapp, or both;

(2) Cancelled checks of the bank account of the Institute of Electronic Technology and the account of Jerry A. Knapp, or both;

(3) Check books with stubs on said accounts which show disbursements of monies of said accounts;

(4) Lists of students who have attended or attending or purported attending the Institute of Electronic Technology;

(5) Students roster lists of said Institute of Electronic Technology;

(6) Records of each student at school at Institute of Electronic Technology.

Search Warrant

You are therefore commanded to search said premises and if any such property be found therein or thereon, you will seize and make due return of this search warrant with a report of your actions hereunder within one (1) day of its execution.

Witness my hand as Judge of the McCracken County (Quarterly) Court at Paducah, McCracken County, Kentucky, this ____ day of April, 1976. This warrant signed at _____ a.m. o'clock.

_____

Raymond C. Schultz, Judge
McCracken County (Quarterly) Court

RETURN:

By Officers: _____

_____

PROPERTY FOUND BY SEARCH:

_____

_____

_____

_____

_____

_____

_____

_____

EXHIBIT No. 16 (COURT'S EXHIBIT #4)

SEARCH WARRANT

THE COMMONWEALTH OF KENTUCKY

TO: The Sheriff of McCracken County, Kentucky or any other duly authorized peace officer in the Commonwealth of Kentucky:

It appearing from the oath and affidavit of Albert Jones, Commonwealth's Attorney, Second Judicial District of Kentucky, Paducah, McCracken County, Kentucky, that there is probable cause to believe and that he does believe that there is located in the rooms and offices of the Institute of Electronic Technology in the 1301 Building at 1301 Broadway Street, in Paducah, Kentucky, which offices and rooms are on the left hand side of said building as you enter the front door of the Broadway Street entrance, the following property which constitutes evidence of a crime and fruits of a crime:

(1) Bank deposit records of the Institute of Electronic Technology account and the account of Jerry A. Knapp, or both;

(2) Cancelled checks of the bank account of the Institute of Electronic Technology and the account of Jerry A. Knapp, or both;

(3) Check books with stubs on said accounts which show disbursements of monies of said accounts;

(4) Lists of students who have attended or attending or purported attending the Institute of Electronic Technology;

(5) Students roster lists of said Institute of Electronic Technology;

(6) Records of each student at school at Institute of Electronic Technology.

Search Warrant

You are therefore commanded to search said premises and if any such property be found therein or thereon, you will seize and make due return of this search warrant with a report of your actions hereunder within one (1) day of its execution.

Witness my hand as Judge of the McCracken County (Quarterly) Court at Paducah, McCracken County, Kentucky, this 14th day of April, 1976. This warrant signed at 10:07 a.m. o'clock.

(s) Raymond C. Schultz, Judge
McCracken County (Quarterly) Court

RETURN:

By Officers: _____

_____

PROPERTY FOUND BY SEARCH:

_____

_____

_____

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_____

_____

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_____

EXHIBIT No. 17 (COURT'S EXHIBIT #5)

SEARCH WARRANT

THE COMMONWEALTH OF KENTUCKY

TO: The Sheriff of McCracken County, Kentucky or any other duly authorized peace officer in the Commonwealth of Kentucky:

It appearing from the oath and affidavit of Albert Jones, Commonwealth's Attorney, Second Judicial District of Kentucky, Paducah, McCracken County, Kentucky, that there is probable cause to believe and that he does believe that there is located in the rooms and offices of the Institute of Electronic Technology in the 1301 Building at 1301 Broadway Street, in Paducah, Kentucky, which offices and rooms are on the left hand side of said building as you enter the front door of the Broadway Street entrance, the following property which constitutes evidence of a crime and fruits of a crime:

(1) Bank deposit records of the Institute of Electronic Technology account and the account of Jerry A. Knapp, or both;

(2) Cancelled checks of the bank account of the Institute of Electronic Technology and the account of Jerry A. Knapp, or both;

(3) Check books with stubs on said accounts which show disbursements of monies of said accounts;

(4) Lists of students who have attended or attending or purported attending the Institute of Electronic Technology;

(5) Students roster lists of said Institute of Electronic Technology;

(6) Records of each student at school at Institute of Electronic Technology.

Search Warrant

You are therefore commanded to search said premises and if any such property be found therein or thereon, you will seize and make due return of this search warrant with a report of your actions hereunder within one (1) day of its execution.

Witness my hand as Judge of the McCracken County (Quarterly) Court at Paducah, McCracken County, Kentucky, this ____ day of April, 1976. This warrant signed at _____ a.m. o'clock.

_____

Raymond C. Schultz, Judge
McCracken County (Quarterly) Court

RETURN:

By Officers: _____

_____

PROPERTY FOUND BY SEARCH:

_____

_____

_____

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_____

_____

_____

EXHIBIT No. 18 (COURT'S EXHIBIT #2)

RETURN OF PROPERTY FOUND

Received from a search at I.E.T., on 4/14/76, by a Search Warrant issued by Raymond Schultz.

Item No.	Description
# 01.	Recent Graduates, Accounts Receivable
# 02.	Corporate Records: Terra Tres., General Investments; Personal Bank Statements (Knapp)
# 03.	File Drawers—Student Registration Cards
# 04.	Small File Box—Student Record Cards
# 05.	File Drawer—Accounts Receivable
# 06.	Cancelled Checks—1973
# 07.	" " —1972
# 08.	" " —1975-76
# 09.	" " —1974-75
# 10.	Receipt Books—1974-75
# 11.	College Work Study Payroll Books—1970-75
# 12.	IET Payroll Books—1975-1967
# 13.	Receipt & Disbursements Books—1976-1964
# 14.	Student Files & Pay Cards, Receipt Book 3/29/71-5/22/7????
# 15.	Book of student info re Gov't loans given Albert by May & Avedisian

EXHIBIT No. 19

CONSOLIDATED MOTION FOR SUPPRESSION OF EVIDENCE AND/OR FOR DISMISSAL OF INDICTMENT

Comes, defendant, Jerome A. (Jerry) Knapp, by his attorneys, and moves the Court pursuant to RCr 8.16 and RCr 8.18 of the Kentucky Rules of Criminal Procedure, for an Order of suppression of evidence and/or a dismissal of the indictment returned herein the above-styled action upon the following grounds:

1. THAT, the unlawful search and seizure of the evidence to be used against said defendant in any criminal proceeding and all evidence directly or indirectly obtained therefrom, was in direct violation of defendant's rights under the Fourth, Fifth, Sixth and Fourteenth Amendments of the Constitution of the United States and Section 10 of the Constitution of the Commonwealth of Kentucky, and/or any pertinent rule, case law or statute promulgated thereunder.

2. THAT, the unlawful search and seizure constituted an absolute invasion of defendant's right of privacy and exceeded the legal permissible limits.

3. THAT, the evidence so unlawfully seized was not in plain view of the arresting officers.

4. THAT, the unlawful search and seizure was not made pursuant to defendant's consent, therefore, defendant did not waive his rights.

5. THAT, the police officers arrested defendant on April 9, 1976, made the unlawful search and seizure on April 14, 1976, and the indictment was returned by the McCracken County Grand Jury on April 16, 1976, and therefore, the search was not made incidental to a lawful arrest.

6. THAT, there was no probable cause for the search.

7. THAT, at no time did defendant have any weapon or something of similar nature that could have been used as evidence against him.

8. THAT, the 'affidavit for search warrant' was executed by Albert Jones, Commonwealth Attorney of McCracken County, Kentucky, on April 14, 1976, before Honorable Raymond C. Schultz, Judge of McCracken County Quarterly Court, a photo copy of which is appended hereto and made a part hereof, marked Court's Exhibit No. 1.

9. THAT, the 'first search warrant' was prepared by the office of the Commonwealth Attorney of McCracken County, Kentucky, at the time of preparation of the 'affidavit for search warrant,' however, the search warrant was not executed by the foregoing parties, a photo copy of which is appended hereto and made a part hereof, marked Court's Exhibit No. 3.

10. THAT, the 'second search warrant' was prepared by persons unknown to defendant, however, the same has the signature of Honorable Raymond C. Schultz, Judge of McCracken County Quarterly Court with a date of execution appearing thereon as of April 14, 1976, a photo copy of which is appended hereto and made a part hereof, marked Court's Exhibit No. 4.

11. THAT, the 'second search warrant,' marked Court's Exhibit No. 4, does not have a return executed by the officers who conducted the unlawful search and seizure nor the property found by such search. However, the return was signed by a deputy sheriff in open Court at the hearing of defendant's motions on September 27, 1976, all to which defendant objected.

12. THAT, the whereabouts of the 'second search warrant' marked Court's Exhibit No. 4, was not known to exist by the Office of the County Attorney of McCracken County,

the Office of the County Judge of McCracken, the Office of the Circuit Clerk of McCracken County, the Office of the Commonwealth Attorney of McCracken County, or the Office of the Sheriff of McCracken County, however, the same appeared and was introduced by the Commonwealth Attorney of McCracken County for the first time during a hearing on several motions by the Court on September 27, 1976.

13. THAT, as further grounds for defendant's motion, the Commonwealth Attorney, Albert Jones, in his response to defendant's original motion for suppression of evidence and for dismissal of indictment filed on September 13, 1976, states:

> "that the contracts and tuition agreements which the defendant states are in violation of Federal law and Federal regulations and are therefore, according to the defendant inadmissible in evidence, are contracts and tuition agreements formulated by the defendant himself as president of his company and not by the victim of the defendant's forgeries and therefore would certainly be odd that the defendant could say that the evidence would not be admissible because of his illegal contract. Besides that, the defendant has no authority on this issue."

the foregoing is an admission by the Commonwealth Attorney that the retail installment contracts and tuition agreements which are the subject matter of the indictment returned in this case, are between defendant as president of his company and Associates Financial Services Company of Ky., Inc., and if the student was not involved, there cannot be a forgery because the student's signature becomes moot. With respect to the issue of defendant's possession of a forged instrument as alleged by the Com-

monwealth, defendant was merely an agent of the corporation standing in the same shoes as the other employees of the corporation. Therefore, the indictment returned under KRS 516.060 cannot stand and must be dismissed.

14. THAT, if the retail installment contracts (which are the subject matter of this indictment) are between Associates and the Institute, the students' signatures on such contracts are immaterial, thus, cannot constitute forgery. Some of the discounted contracts were signed and others were not signed, before discounting the same. However, if the retail installment contracts are between Associates and the student, then the requirements of Regulation "Z" must have been met. They were not. Moreover, some of the retail installment contracts did not even bear the signature of Defendant thereon, before discounting.

15. THAT, in the case of Commonwealth v. Brewer, 67 S. W. 994 and Davis v. Commonwealth, 399 S. W. 2d 711, the Court held that there cannot be a forgery of an instrument which does not have legal efficacy. Accordingly, where the subject matter of the indictment herein has no legal efficacy, then there cannot be a forgery as charged herein.

16. THAT, Title 5 USC 552a, Subsection 7 (Student Privacy Act) states that written permission must have been obtained from the head of the agency, before seizure. If the agency was the Institute of Electronic Technology, then no permission was obtained from that agency by anyone, before seizure. If the agency was Associates Financial Services Company of Kentucky, Inc., it gave the Commonwealth Attorney's office all student contracts and records in relation thereto, prior to the indictment, thus, in direct violation of the Act. No criminal charges had been filed, and no permission was obtained from the student, or the head of the agency, before seizure.

17. THAT, the Commonwealth Attorney's office and the Sheriff of McCracken County unlawfully seized certain records of individuals which were part and parcel of a 'system of records' from the Institute of Electronic Technology, without the prior written consent of the individuals in question, all in violation of Title 5 United States Code Section 552a et seq.

18. THAT, the Federal law cited heretofore states that no agency shall disclose any record which is contained in a 'system of records' by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be—

> (7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.

19. THAT, the Commonwealth Attorney's office did not obtain prior written request from head of the instrumentality which maintained said records specifying the particular portion desired and the law enforcement activity for which the record is sought, all in violation of Title 5 United States Code Section 552a et seq.

20. THAT, as further grounds, such instruments are in direct violation of KRS Sections 360.210-360.265 and KRS 360.260 states that State law shall require disclosure of items of information substantially similar to the require-

ments of any applicable Federal law. To effectuate this intent, notwithstanding any provisions of KRS 360.210 to 360.265 to the contrary, the Commissioner is specifically authorized, empowered and directed to adopt such interim regulations governing the information to be disclosed and the manner of disclosure so as to assure that the requirements of the State law meet the requirements of such applicable Federal law, effective January 1, 1969.

21. THAT, the foregoing evidence did not meet the requirements as set out above, thus, the same should be suppressed and/or, the indictment herein be dismissed.

22. THAT, the Forty-One allegedly forged instruments allegedly uttered to an employee of Associates Financial Services Company of Kentucky, Inc. (Retail Installment Contracts and Tuition Agreements) between Electronic Sales Engineers, Inc., d/b/a Institute of Electronic Technology and Associates Financial Services Company of Kentucky, Inc., bearing the allegedly forged signatures of several parties named in the criminal indictment returned herein the above styled action allegedly in violation of KRS 516.060, as set out in said indictment, do not meet the requirements and are in direct violation of the Federal Reserve Board Regulation "Z" (12 CFR Section 226, Title 12, Chapter II, Part 226 and Title I, Truth and Lending Act and Title V, General Provisions, Consumer Credit Protection Act; Public Law 90-321; 82 Stat. 146 et seq., effective July 1, 1969).

23. THAT, as further grounds, such instruments are in direct violation of 15 USC Sections 1601-1691, and/or any other pertinent Federal Statute in relation thereto.

24. THAT, the foregoing evidence did not meet the requirements as set out above, thus, the same should be suppressed and/or, the indictment herein be dismissed.

25. THAT, defendant's final ground for dismissal of this action and/or for suppression of evidence is that the search warrant in question is nuil and void.

Authority for the above is the case of Smith v. Commonwealth, Ky., 504 S. W. 2d 708 (1974) whereby the search warrant was headed:

In the McCracken Quarterly Court

of McCracken County, Kentucky

Search Warrant

to any policeman, sheriff, constable or other peace officer of the Commonwealth of Kentucky

The Kentucky Court of Appeals held the warrant void, stating (p. 709):

> "We conclude that a search warrant is 'process' within the meaning of Section 123 of the Constitution of the Commonwealth of Kentucky and the failure to style the search warrant 'The Commonwealth of Kentucky,' renders it void."

Section 123 of the Constitution states:

> "The style of process shall be, 'The Commonwealth of Kentucky,' all prosecutions shall be carried on in the name and by the authority of the 'Commonwealth of Kentucky,' and conclude against the peace and dignity of the same."

Based upon the foregoing, it is defendant's position that inasmuch as the search warrant in question was not properly styled as required by the above authority, the same must be deemed null and void.

26. THAT, notwithstanding the foregoing, the search warrant in question was too broad; did not specifically specify what evidence was to be seized, and further, did

not specify the exact location of the seized evidence within the premises.

27. THAT, this case has been set for trial on February 14, 1977, at 9:00 a.m. o'clock, and that this request for relief is being made within a reasonable time in advance of trial.

DATED this the 8th day of December, 1976.

Avedisian & Avedisian
By: /s/ Michael Avedisian
1200 Broadway
Paducah, Kentucky 42001
Telephone (502) 442-4379
Attorneys for Defendant

NOTICE OF MOTION

PLEASE TAKE NOTICE, that the undersigned will bring the foregoing Motion on for hearing before this Court on the 24th day of January, 1977, at 9:00 a.m. o'clock, or as soon thereafter as counsel can be heard.

DATED on this the 8th day of December, 1976.

/s/ Michael Avedisian

EXHIBIT No. 19A

SUPPLEMENTAL MOTION TO CONSOLIDATED MOTION FOR SUPPRESSION OF EVIDENCE AND/OR DISMISSAL OF INDICTMENT

Comes defendant, Jerome A. (Jerry) Knapp, by his attorneys, and moves the Court pursuant to RCr. 8.16 and RCr. 8.18 of the Kentucky Rules of Criminal Procedure and any other pertinent rule therein, for an Order for Suppression of Evidence and/or a Dismissal of the Indictment

returned herein the above-styled action upon the following grounds:

1. That, Associates Financial Services Company of Kentucky, Inc. is not an injured party in this case, therefore, the indictment herein should be dismissed for failure to meet the requirements under KRS 516.060 for counts One through Forty-One, inclusive.

2. That, the Affidavit for Search Warrent is defective on its face, as to form and substance, based upon the following grounds:

(a) That, no exhibits were attached to the Affidavit upon which basis the Search Warrant was issued.

(b) That, the style of the Affidavit does not contain the words: "The Commonwealth of Kentucky", at the top of the document.

(c) That, the Affidavit for Search Warrant states:

> "* * * Associates Financial Services Company of Kentucky, Inc. has purchased from said Jerry Knapp Four Hundred Sixty-Seven (467) agreements which are forgeries or represent agreements on non-existent students * * *."

Yet affiant received at least ten (10) or more written acknowledgments from students who acknowledged the fact that the signatures appearing on said agreements were their true and lawful signatures.

(d) Further, Associates Financial Services Company of Kentucky, Inc. did not purchase said agreements from Jerry Knapp, but rather, from Electronic Sales Engineers, Inc. d/b/a IET, an Indiana Corporation.

(e) That, Robert Joseph Grant stated to affiant on April 12, 1976 that Grant was on the premises of IET and saw some copies of student tuition agreements, cancelled checks, bank deposit lists, check book stubs, school student lists and attendance records of IET, (as set out on page 2

in the Affidavit for Search Warrant herein), but nowhere does affiant establish that he had reasonable and probable cause to believe that grounds existed for the issuance of a search warrant; that the property seized be brought before the Court and retained subject to Order of the Court.

(f) That, the Commonwealth Attorney of McCracken County based his Affidavit for Search Warrant upon the foregoing, yet testified in open Court at the Hearing held on September 27 and 28, 1976 by stating the following on page 54 of the transcript:

> "What does Government loans and copies of the records of Government loans given to the school have to do with forgeries? What do the cancelled checks of the school have to do with the forgeries? What do the college work study payroll books, where they pay students have to do with the books? What do the payroll books as to the secretary, the janitors, and the payment of rent, what does that have to do as to whether or not—and the funds—to the forgeries? * * * If he says somebody else forged them, that can be his defense * * *. Leaving only the thing that we feel is to be decided is the matter as to whether or not these records were seized pursuant to a valid search warrant, and of course the charges that he has, we submit, are not practical to suppression of the evidence."

(g) That, the Affidavit for Search Warrant is defective, inconsistent, unfounded, too broad and indefinite, and made without probable cause.

DATED this the 26th day of January, 1977.

Avedisian & Avedisian
By (s) Michael Avedisian
1200 Broadway
Paducah, Kentucky 42001
Attorneys for Defendant

NOTICE OF MOTION

PLEASE TAKE NOTICE, that the undersigned will bring the foregoing Motion on for hearing before this Court at the earliest convenience of the Court, or as soon thereafter as counsel can be heard.

DATED this the 26th day of January, 1977.

(s) Michael Avedisian

EXHIBIT No. 19B

MOTION TO SUPPRESS AND/OR TO DISMISS

Comes defendant, Jerome A. (Jerry) Knapp, by his attorneys, and hereby moves the Court, under the Kentucky Rules of Criminal Procedure, for a Third Order directing the Commonwealth Attorney of McCracken County, Kentucky, to comply with the Order of the Court in Division I entered on the 10th day of February, 1977, at once, before trial, to produce and disclose the verifications executed by the twenty-five (25) students named in defendant's Motion dated April 22, 1977 and filed on April 25, 1977, as to the genuineness of their signatures on the twenty-five (25) Retail Installment Contracts and Tuition Agreements which are the subject matter of the forty-one (41) Count Indictment returned against the defendant by the McCracken County Grand Jury on April 16, 1976, and in support thereof, file a photo copy of the Notations made by Mr. D. Hull dated February 6, 1976, entitled "Contract Signatures Verified by Students", appended hereto and made a part hereof, marked Exhibit "A".

The foregoing document establishes the fact that the verifications are, in fact, in existence and must be turned over to the defendant at once. If Division II of the Court

does not order the Commonwealth's Attorney to turn the above documents over to the defense, and/or the Commonwealth's Attorney refuses to do the same, defendant moves the Court for a dismissal of this action.

DATED this the 2nd day of May, 1977.

Avedisian & Avedisian
By (s) Michael Avedisian
1200 Broadway
Paducah, Kentucky 42001
Attorneys for Defendant

NOTICE OF MOTION

Please take notice, that the undersigned will bring the foregoing Motion for Suppression and/or to Dismiss the action on for hearing before the Court at the earliest convenience of the Court, or as soon thereafter as counsel can be heard.

DATED this the 2nd day of May, 1977.

(s) Michael Avedisian

EXHIBIT "A"

D. Hull
2/6/76

Contract Signatures Verified By Students

Upon the instructions of Dave Smith on 2/4/76, we were to contact the students who signed our verification statement and have them examine the signature on the Retail Installment Contract and Tuition Agreement that we purchased from the school.

A total of 129 verification statements were obtained from the students. Thirty students have been contacted to date with the following results.

17—Signed a confirmation that they did not sign the contract.

10—Acknowledged that signature was valid.

1—Student stated signature is doubtful but would not sign confirmation.

2—Claimed signatures were not valid but would not sign confirmation.

EXHIBIT No. 19C

SUPPLEMENTAL MOTION TO SUPPRESS AND/OR MOTION TO DISMISS

Comes defendant, Jerome A. (Jerry) Knapp, by his attorneys, and moves the Court pursuant to RCr. 8.16 and RCr. 8.18 of the Kentucky Rules of Criminal Procedure and any other pertinent rule therein, for an Order of suppression of evidence and/or dismissal of the indictment returned herein the above-styled action, upon the following grounds:

1. That, disclosure and redisclosure of the Forty-One (41) Retail Installment Contracts and Tuition Agreements of Associates Financial Services Company of Kentucky, Inc. (hereinafter called "Associates"), which are the subject matter of the indictment returned herein, violated Title 20 USCS 1232(g) and therefore, must be suppressed as evidence in this case.

2. That, plaintiff's answers to defendant's Bill of Particulars state that said Forty-One (41) Retail Installment Contracts and Tuition Agreements had an applicant's signature at the bottom of each of said contracts at the time of sale and purchase thereof so far as known to the Commonwealth, by and between Associates and Electronic Sales

Engineers, Inc., an Indiana Corporation (hereinafter called "IET"), however, defendant states that each of said contracts did not have an applicant's signature at the bottom of each of said contracts at the time of sale and purchase thereof.

3. That, each of said Forty-One (41) contracts lack legal efficacy upon grounds that there was no finance charge and other information required by law reflected in said contracts between Associates and IET.

4. That, after taking into account all of the holdbacks, interest and financial charges improperly and illegally made by Associates with respect to the contracts in question, there is no victim in this case to support the charge made against defendant under KRS 516.060 and/or any other pertinent statute thereunder.

Dated on this 22nd day of August, 1977.

Avedisian & Avedisian
By (s) Michael Avedisian
1200 Broadway
Paducah, Kentucky 42001
Attorneys for Defendant

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion for hearing before this Court on a day and date to be set by the court, or as soon thereafter as counsel can be heard.

Dated on this 22nd day of August, 1977.

(s) Michael Avedision

EXHIBIT No. 19D

SUPPLEMENTAL MOTION TO SUPPRESS AND/OR MOTION TO DISMISS

Comes defendant, Jerome A. (Jerry) Knapp, by his attorneys, and moves the Court pursuant to RCr. 8.16 and RCr. 8.18 of the Kentucky Rules of Criminal Procedure and any other pertinent rule therein, for an Order of suppression of evidence and/or dismissal of the indictment returned herein the above-styled action upon the following grounds:

1. That, the records of the students who are the subject matter of the Forty-One (41) Count Indictment returned herein against the defendant, were seized by the Commonwealth Attorney's office of McCracken County, Kentucky by subpoena issued therefore, which records were located at the Institute of Electronic Technology, 1301 Broadway, Paducah, Kentucky and at the Paducah Bank and Trust Company, 6th & Broadway, Paducah, Kentucky.

2. That, no notification whatever was given by the Paducah Bank and Trust Company to the defendant, Jerome A. (Jerry) Knapp, who was the custodian of the records, in order to enable said defendant to obtain the consent of the parent and/or student before a disclosure or redisclosure was made by said bank to the Commonwealth Attorney's office of McCracken County, Kentucky and/or any other third party whomsoever.

3. That, the Commonwealth Attorney's office should have notified the defendant, Jerome A. (Jerry) Knapp, custodian of said student records, prior to seizure by subpoena of said student records located at the Institute of Electronic Technology and at said bank, in order to enable said defendant, as custodian, to notify the parent and/or

student of the same, which would have permitted the parent and/or student and said custodian to inspect and to correct any discrepancies contained in said records and obtain the necessary consent and approval before disclosure or re-disclosure of the same.

4. That, prior to the issuance of any subpoenas for said records, the Paducah Bank and Trust Company voluntarily furnished photocopies of said students' records to Associates Financial Services Company of Kentucky, Inc. without first permitting the parent and/or student and/or defendant, Jerome A. (Jerry) Knapp, custodian of said records, to inspect and correct any discrepancies contained in the same and without the necessary consent or approval of anyone in connection therewith.

5. That, all of the foregoing acts by the parties heretofore mentioned violated the defendant's rights under Title 20 USC 1232(g) and the Constitution of the United States and the Commonwealth of Kentucky.

Dated this the 26 day of August, 1977.

Avedisian & Avedisian
By (s) Michael Avedisian
1200 Broadway
Paducah, Kentucky 42001
Attorneys for Defendant

EXHIBIT No. 20

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TRANSCRIPT OF HEARING
(September 27, 1976)

McCRACKEN CIRCUIT COURT

DIVISION No. I

Indictment #11922

COMMONWEALTH OF KENTUCKY - - - *Plaintiff*

v.

JEROME (JERRY) A. KNAPP - - - - *Defendant*

Following is a stenographic transcript of the testimony and proceedings of a hearing held in Division I of McCracken Circuit Court, Paducah, Kentucky, on September 27, 1976, with the Honorable Lloyd Emery presiding.

Honorable Albert Jones, Commonwealth's Attorney for the Second Judicial District of Kentucky, was present and represented the Commonwealth of Kentucky. The Honorable Michael Avedisian and the Honorable Andrew Avedisian were present as Counsel for the Defendant.

* * * * * * *

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Mr. Avedisian: We brought those up from the vault after we got a Court Order. We left them in your—

Judge: Were they seized under a Search Warrant?

Mr. Avedisian: Yes, and there's nothing in the Search Warrant that talks anything about certain records that

they seized, and I want to go into that on my Motion to Suppress and my Motion to Dismiss. At this time there is another piece of very vital evidence that I need for the defense of this case and that is that I've only had access to 13 of the 41 allegedly forged retail contracts that are the subject matter of the Indictment out of the 41. I have not seen the remaining 28, and I need time to go through those.

Judge: Based on the Indictment, which ones do you not have?

Mr. Avedisian: Based on the Indictment—

Judge: How many do you have?

Mr. Avedisian: One through 13 I have.

Judge: Let's hear the ones you have.

Mr. Avedisian: Counts 1 through 13.

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Judge: The rest of them you do not have?

Mr. Avedisian: I do not have the rest of them Your Honor.

Judge: Why is that?

Mr. Avedisian: Well, we just haven't had the time to get them. I just haven't had sufficient time to get to them. In each one of those contracts, Your Honor, there is 5 or 6 sheets of paper. There's allegedly 2 or 3 contracts that are duplicated. So, when we talk about 1 through 13, you might be talking about 20 contracts. Each one of them has 5 or 6 sheets which has to be photocopied and then studied to prepare the case. The procedure is not simple. If the Defendant wants to get an attorney that can do it a little faster than I can or better than I can, then of course, he is entitled to do so, but I can't do it any faster. I think that the Commonwealth Attorney's office would attest to the fact that I've worked as fast as I could in there for the time I was in there. Their machine broke down a couple

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of times. A lot of things happened in there that prevented me from doing it any faster. We went as fast as we could Your Honor.

Judge: When did you start?

Mr. Avedisian: Well, Your Honor, when did I start? We started Thursday a week ago. When was it Mark?

Mr. Bryant: Thursday a week from this past Thursday.

Judge: What date is that?

Mr. Bryant: The 16th.

Mr. Avedisian: We started before then. We started right after the 2nd of September. We were allowed to go into the vault one time. We've been discovering and inspecting since the 2nd of September. We went down to the vault one time before that, Mark.

Mr. Bryant: Oh, I know; that is when you were up in the office.

Judge: Mr. Avedisian, have you found a defense for the Defendant yet?

Mr. Avedisian: Yes Your Honor, we have.

* * * * * * *

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Mr. Avedisian: I will be glad to give them the names—

Mr. Jones: He's entitled to the names of witnesses that testified before the Grand Jury. You have that because that is on the Indictment. Do you know anyone that appeared before the Grand Jury that their name isn't on that list?

Judge: If so, he's obligated to get it to you. The 5th item was a Motion for the transcript of the Grand Jury proceedings, and there was none, and no recording made; so that is overruled. On your suppression of evidence Motion of 9-2-76, I am going to pass that for the time being. On your Motion No. 7, which is a Supplemental for dis-

covery and inspection, that is overruled for previous reasons. On No. 8 your Motion of 9-17-76 Supplemental Motion for Suppression of Evidence, I am going to pass that for the moment. On the Motion to return a certificate for certification of documents—of certain documents. He's already acknowledged his willingness to let

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you use those to the extent that might be necessary in making IRS returns. So, that is overruled. The Motion of 9-21-76, Supplemental Motion for Suppression of Evidence and dismissal of the Indictment, the dismissal of the Indictment is overruled.

Mr. Avedisian: Your Honor, I would like to—

Judge: The suppression, the portion of it that deals with suppression is passed for the time being to be considered with your Motion of 9-17-76 and 9-2-76, that deals with suppression. Obviously, if there is a finding that the suppression relates to the Indictment why, that would be concurrent. Your Motion of 9-24-76, which is your original Motion to continue and the one of 9-27-76, the Supplemental Motion to continue, we will take up before we get into any suppression motions. So that leaves two motions. One is for suppression of evidence, the other is a Motion to Continue. All others are overruled.

* * * * * * *

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Mr. Jones: My personal notes—

Judge: The only thing I am interested in is not whose notes are personal and who's aren't. It's whether the Defendant gets a fair trial. We are not going to let any evidence in that is incompetent or immaterial or is hearsay. Whatever is legally admissible, we will let in. Do you want to take some testimony on your Motion to suppress?

Mr. Avedisian: Your Honor, do you want to take testimony first? I've got certain things I want to get into the Record—

Judge: Well, go ahead. However you want to handle it.

Mr. Avedisian: The Defense bases its motion to suppress on these following grounds. And that is that the instruments in question are not valid instruments because: 1. They violate Title 5, U.S. Code, Section 552A. 2. The Federal Reserve Board Regulation Z, which is contained in—

Judge: What was the first one you mentioned, wasn't that Z?

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Mr. Avedisian: No Your Honor, that's not. That is the Student Privacy Act, Title 5, Section 552A is the Student Privacy Act; which I will get into. I just want to outline these various citations—

Judge: Student Privacy Act?

Mr. Avedisian: Yes, Your Honor. Secondly, that there is a violation of Federal Reserve Board Regulation Z, which is contained in 12 CFR, Section 226. Third, Title 1 of the Truth and Lending Act and Title 5 of the Consumer Credit Protection Act; which is Public Law 90-321, effective July 1, 1969, was violated—

Judge: By whom?

Mr. Avedisian: Violated by associates discount of Kentucky, Inc. and the retail installment contracts which they financed.

Judge: How about Regulation Z? Who was that violated by?

Mr. Avedisian: Well, Your Honor, I am going to go into that. I'm just naming you the citations. Can I tell you that as I go down the line on my notes?

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Judge: Well, I just sort of had them here together. I thought maybe you would give me the grounds.

Mr. Avedisian: I will give it to you in the same order.

Judge: Okay.

Mr. Avedisian: And also, we contend that KRS 360.210 through 360.265 are the relevant statutes involved in connection with the federal statute. We further contend, as the Defense, that there was no forgery of these contracts or these instruments because the instruments per se had no legal efficacy. And our authority for that is 67 Southwestern 994, which is the Commonwealth versus Brewer and 399 S. W. 2d 711, Davis versus the Commonwealth. Now Your Honor, going back to the first one, the Student Privacy Act, which is Title 5 of the U.S. Code, Section 552A. It is our position that written permission must have been obtained before seizure from the head of the agency. Now, we contend that this was not done. That particular statute, the pertinent parts of that particular statute, read as follows: "Conditions of disclosure,

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this is Section 552A. "No agency shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by or with the prior written consent of the individual, who would be the student in this case, to whom the record pertains. Unless disclosure of the record would be . . ." and then we skipped the Subsection 7, which is the pertinent Subsection, "to another agency or to an instrumentality of any governmental jurisdiction within or under the control the United States for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency or instrumentality, which would be the Commonwealth in this

case, has made a written request to the agency which maintains a record specifying the particular portion desired and the law-enforcement activity for which the record is sought." We are saying it violated that.

Judge: All right—

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Mr. Avedisian: I'm not finished yet, Your Honor.

Judge: Okay, go ahead on that one.

Mr. Avedisian: If the agency was I.E.T., that is Institute of Electronic Technology, then no permission was obtained. If the agency was Associates, which I am referring to as Associates Discounts of Kentucky, Inc., they gave the Commonwealth's Attorney all students contracts and records relating thereto, prior to the indictment. Thus, in violation of the act. No criminal charges had been filed before seizure and no permission was obtained from the students or the head of the agency.

Judge: All right. Is that conclusion of your grounds, Number 1?

Mr. Avedisian: Yes, Your Honor.

Judge: Do you have a response to that?

Mr. Jones: Of course we—many of the—there is no such thing as the students on many of them. It is a fictious name. It is a forgery of a fictitious name. There is no student involved. And this was a governmental action involving a criminal prosecution within the exception.

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Judge: Was the practical matter, was the federal government knowledgeable about the seizure of these things before they were seized.

Mr. Jones: No, the federal government was not involved in the—these items were not seized. They were evidence turned over to the Commonwealth by the victim in the case.

Judge: In other words, it wasn't written permission, but they actually tendered to you their contracts?

Mr. Jones: At my request as evidence in the criminal investigation then going on.

Judge: In other words, they were the complainant's?

Mr. Jones: They were the victims.

Judge: Is that in all 41 counts?

Mr. Jones: Yes, 41 counts. Actually, there were 465 contract packets turned over to us. A survey of the school revealed, I think, somewhere around 111 students that were enrolled down there, yet there were 465 contracts. That is 465 names of different people. Of course, from our investigation many of these people were non-existent, represented by these contracts.

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Judge: On the first grounds that he has cited, show the Court overrules the Motion based on that ground and show Mr. Avedisian's objections to the court ruling. Okay, let's hear Ground Number 2.

Mr. Avedisian: Well,—

Judge: That is your Regulation Z, 12 CFR, Section 226.

Mr. Avedisian: That is right. We also contend that there was a violation of the Federal Reserve Board Regulation 312 CFR, Section 226, Title 12, Chapter 2, Part 226; and Title 1 Truth and Lending Act and Title 5 General Provisions of Consumer Credit Protection Act, which is Public Law 90-321—

Judge: All right, that is your grounds 2 and 3. You've got two different sections there.

Mr. Avedisian: Also 82 Stat 146 etc. And, the grounds are that the Associates Retail Contract, first of all, did not have the required "Notice of right of decision" attached to the contract. Secondly, the student was not informed of the following: A. The total dollar amount of the finance

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charge, except in the case of a credit transaction with finance purchase of a dwelling. B. The date on which the finance charge begins to apply if this is different from the date of the transaction. C. The annual percentage rate. D. The number amounts of due dates of payments. E. The total payment except in the case of first mortgages on dwelling purchases. G. The amount you charge for any default, delinquency, etc., or method you use for calculating that amount. H. Description of any security you will hold. I. Description of any penalty charge for prepayment of principal. J. How the unearned part of the finance charge is calculated in the case of prepayment. Charges deducted from any repaid or refund must be stated. It goes on to say on a subtitle series of single payment obligations. Any extension of credit involving a series of single payment obligations shall be considered a single transaction, subject to the disclosure requirements of this part.

Judge: What was E and G? E, F, and G?

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Mr. Avedisian: Let's see. The total payments is E. Except in the case of first mortgages on dwelling purchases. F. Is the amount you charge for any default, delinquency, etc., or method you use for calculating that amount. G. Description of any security you will hold. H. was description of any penalty charge for prepayment of principal. It is our further position, Your Honor, that if the retail contract is between associates and I.E.T.; then the student's signatures, whether they are on that agreement or not, are immaterial. Therefore, no forgeries. Some of the discounted contracts are signed and some are unsigned before discounting. In fact, over one hundred (100) contracts bear no signatures which were discounted. Now,

conversely, if the retail contract in question is between Associates and the Student, then regulation Z and all of these statutes relative thereto the requirement thereof, come into play. Some of the retail contracts in the Indictment don't even

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have Knapp's signature on it before discounting. Now, Associates even admits, as I have stated before on the argument of another Motion, that in Schmidt's memo of January 30, 1976, to his superiors; Schmidt, I believe is the accountant for Associates, he states, "Incomplete contracts were purchased by the branch, and incomplete, inadequate credit investigation was made by the branch." And he goes on further to say that our long term liability results from a potential suit by the government for aiding a conspiracy by our gross negligence to detect fraud.

Judge: That's your grounds 2 and 3, right?

Mr. Avedisian: That is right, Your Honor.

Judge: Or, is that just two?

Mr. Avedisian: Well, that is—Ground 1 was the Student Privacy Act, which you overruled. This was Regulation Z—

Judge: You said that Ground Number 2 was Regulation Z and three was Title 5 Consumer Credit Protection Act.

* * * * * * *

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Judge: The only way that it couldn't be a contract between the student and I.E.T. is that it's a contract between the student and Associates; and the only way it could be that would be that I.E.T. would act as an agent for Associates. Are you prepared to prove that?

Mr. Avedisian: Do you want to give me that one more time, Your Honor?

Judge: Obviously it wasn't a contract between I.E.T. and Associates unless they were acting as agents for Associates. The students didn't go down to Associates and sign a contract did they?

Mr. Avedisian: No.

Judge: They signed it with I.E.T.?

Mr. Avedisian: Right.

Judge: So, the only way it could be a contract between the student and Associates is for I.E.T. to act as agent for Associates.

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Mr. Avedisian: I am with you so far.

Judge: Let me rule on that unless you have got something else to say about it.

Mr. Avedisian: Your Honor, it is my understanding that Associates mailed a form letter to each student to come by their office and verify the contract and verify the contract and the obligation, and to pick up their payment books, prior to the discounting; and, of course, this was not done through the gross negligence of Associates. At the time that the student came in to pick up his payment—

Mr. Jones: I don't think we ought to get into what the evidence is going to be in this case.

Judge: I will tell you what I want to do on this. If we've got a question as to whose contract it is, and if Associates in some way—it was their contract rather than I.E.T.'s, then we may have a new ball game. I don't know. But I tell you what. I want to delay any ruling on that based upon the evidence that is presented at the time it is presented, and then we will rule on it. The contracts that are

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introduced, we will take them up as they come up. Either they can create an agency relationship, or they don't. So,

let's postpone a ruling on grounds 2 and 3 until the evidence is introduced to see what it has to say, and see who the contract is between. Because now, the Commonwealth is going to have to have some proof in that respect, and I would assume that the Defense will have some rebuttal. So, I think we ought to take that up as it comes up. All right now, your 4th Ground was 360-210-265. You said that was violated next with a federal statute, and really what you are talking about is the same thing that you pointed out in Grounds 2 and 3, right?

Mr. Avedisian: Yes.

Judge: All right. That takes us to Ground 5. Your contention is that there is no forgery since these two cases 67 Southwest 994 and 399 Second 717; that is the Commonwealth versus Brewer, and Davis versus Commonwealth are applicable to this situation. I'm not familiar with those cases, would you like to tell me what they say?

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Mr. Avedisian: Those cases simply state that if you have an instrument, which has no legal efficacy, it is an illegal instrument because it is in violation of the law in one respect or another.

Judge: What kind of instruments were involved in those cases?

Mr. Avedisian: I believe one was a mortgage, and the other one was a note.

Judge: What made them illegal?

Mr. Avedisian: I have the cases here, your Honor; let me read it to you. This was the case of 399 S. W. 2nd 711. This was involving a promissory note. The Defendant was convicted in Jefferson County Circuit Court of uttering a forged instrument in writing, which he appealed. Court of Appeals Judge Hill held that indictment respecting promissory note was not defective in that it failed to

state all facts connected with issuance of the note, including that note was blank as to date and amount, where legal effect was same as delivering completely filled-in instrument.

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Second, No. 1. Forgery: Writing must be of apparent legal efficacy or foundation of legal liability to be subject of forgery. "The first important issue raised in this case is whether the note uttered by the appellant to Citizens Bank has legal efficacy and, therefore, the proper subject of forgery. The appellant contends that the answer to this question should be no, since the note was not filled in with the particulars as to the date and amount. It is true that a writing must be of apparent legal efficacy or the foundation of a legal liability to be the subject of forgery. They go on to cite a lot of cases in Kentucky, here.

Judge: Now, your contention is then that these contracts didn't have the date or the amount.

Mr. Avedisian: No, they didn't have any legal efficacy because they violated either federal or state law or both; and, therefore, the issue of forgery becomes—

Judge: Do they have the date and the amount?

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Mr. Avedisian: Yes, they had a date, and they had an amount.

Judge: What about 67,944; you say that is a mortgage.

Mr. Avedisian: I want to correct my answer. The date and amount were not on the contract in all cases.

Judge: Okay, I will look at the case; and I would suggest that you do the same.

Mr. Jones: You are staying that the evidence that we have don't have dates and amounts on them?

Judge: He is not saying that. He is saying that they don't have legal efficacy because they are not valid from

the start, is what he is saying. I don't know whether that is what the case says or not. I will have to read it. All right, 67, 994, what does that say?

Mr. Avedisian: An indictment does not lie for forgery of an instrument, the existence of which is averred to be uncertain. One who adds your purported copy made by him, signatures; which were not appended to the original is not guilty of forgery.

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Judge: Let's delay ruling on that.

Mr. Jones: Judge, if you will look, I just want to ask you to jot down 516.010, it defines what a written instrument is now. That can be private letters, diaries, or anything. Anything that can be used to the disadvantage of somebody, under the new criminal code. That gets you to the statute that he's charged with violating, 516.060, then that takes you to 516.030 then you go—

Judge: All right. I don't know what the date of indictment was—

Mr. Avedisian: These offenses all occurred in late 1975 and early 1976.

Judge: That is the 1974 statute that became effective July 1, 1975. Do all the charges predate that?

Mr. Jones: Yes, that is right.

Judge: They all predate July 1, 1975?

Mr. Jones: They are all in November and December of 1975 and January of 1976.

Judge: Is there anything else, Mr. Avedision, that you

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Mr. Avedisian: He didn't say anything.

Judge: What do you have down, Alicia?

*Reporter: I didn't hear what he said. I was not listening for him.

Mr. Jones: I did. I heard it. The duplicates—

Mr. Avedisian: Your Honor, I have nothing except the search warrant left.

Judge: All right. Let's hear it.

Mr. Avedisian: It is in the position of the defense that in the first place there was no valid search warrant issued prior to search and seizure of the evidence in this case. All that was in violation of the Defendant's rights under the Fourth Amendment of the United States Constitution, Section 10 of the Kentucky Constitution, and the rule of Criminal Procedure 13.10. On the day in question that we were in the Commonwealth Attorney's office, we filed—

Mr. Jones: I think we ought to hear this under oath in the evidence. I think there should be testimony on it.

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Judge: I have a note here that put Al and Mike under oath. Also Mark and the office girls and other personnel if necessary. So, Shelia, Richard, Al, John, Hal, Barbara—Do each of you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so held you God?

Response: All indicated yes.

Judge: You have down that, under oath, are Mr. Michael Avedision, Attorney for Mr. Knapp; Miss Barbara Gregory, Deputy Clerk; Mr. Hal Cole, Sheriff; Mr. John Bays, Commonwealth Detective; Mr. Albert Jones, Commonwealth Attorney; Ms. Ann Johnson, County Judge, pro tem; Ms. Shelia Miller, Secretary for the County Attorney; Mr. Richard Swain, District Detective. Okay, call on them.

Mr. Avedisian: Wallace Adams, Deputy Sheriff; and Hal Cole, Sheriff.

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*Refer to Page 89 of this transcript.

Judge: Did you have your hand up, Wallace?

Mr. Adams: Yes.

Judge: All right, Wallace Adams, Deputy Sheriff, put him down too.

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Mr. Avedisian: Are we ready to proceed, Your Honor?

Judge: Yes, go right ahead.

Mr. Avedisian: During our inspection and discovery of the evidence in the Commonwealth Attorney's office, I came upon this affidavit for a search warrant signed by Albert Jones, subscribed and sworn to before the County Judge, Raymond Schultz on April 14, 1976. This was in Mr. Jones's file, to which we had access. I asked the office of the County Judge to come up here and also testify, but he has already left and gone home. He is not here in Court, but I do admit seeing the affidavit for the search warrant in Mr. Jones's file. I also admit seeing this yellow sheet of paper, which states at the top, "received from a search at I.E.T. on 4-14-76 by a search warrant issued by Raymond Schultz", and there is no signature on this sheet; and this was laying loose in the same file that contained the affidavit. If you will notice, there are no staple marks on this sheet of paper.

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This was laying loose. This contained a list of items from 1 through 15. These are the 15 carton boxes of evidence that they have stored in the vault in the basement of the courthouse, in addition to what is in Mr. Jones's office in the four filing cabinets. On September 21, 1976, which was last Tuesday; after I got an order of this Court for a discovery and inspection of the vault, I asked the Commonwealth Attorney's secretary, and I know her name is Lena O'Nan, to see the search warrant. She could not find it. I also found in the Commonwealth Attorney's office, along

with the affidavit and the yellow sheet of paper showing the 15 carton boxes of evidence, this search warrant; which is in blank, unsigned, and unreturned by anybody. I am handing this to the Court.

Judge: Instead of handing it to the Court, you might want it to be put into evidence.

Mr. Avedisian: I will file this as Exhibit 1, 2.

Judge: Let's see. Defendant's Exhibit 1 is the search warrant—

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Mr. Avedisian: Affidavit for the search warrant.

Judge: All right. What is Exhibit 2?

Mr. Avedisian: Exhibit No. 2 is a document containing information or description of items seized under the search warrant. Exhibit No. 3 is a blank search warrant.

Mr. Jones: You are introducing as your Exhibits official Court Records. Those are not your Exhibits; those are the records of the Court.

Judge: He can introduce them. All you have got to do is get somebody to get up and say that they are official Court Records if you want to.

Mr. Jones: If he introduces them as the Defendant's exhibits, that means he has access to them, and he can take them with him or do what he wants to with them.

Mr. Avedisian: We will leave them with the Court.

Judge: Let's call them the Court's Exhibits then.

Mr. Avedisian: And I will also introduce Court's Exhibit No. 4, which is a copy of a search warrant allegedly signed by Raymond C. Schultz, Judge, McCracken County Court, on the 14th day

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of April, 1976 at 10:07 a.m. o'clock. On Tuesday, the 21st of September, I asked Ms. Lena O'Nan; who is the secretary of Albert Jones, about the blank search warrant. I asked

her if she knew where the original was. She said she did not. She said that she would check into it for me. Well, about an hour or an hour and a half goes by and she doesn't come back with any kind of an answer. So, I walked out to her desk and said, "Well, Lena, did you find any information about the search warrant?" She said she did not. So then I proceeded to go to the County Judge's office, and I approached Mrs. Ann Johnston there about the matter. I asked her if she knew anything about the whereabouts of the search warrant in the Knapp case, and she said she did not and she hadn't seen one. I asked her where it would be kept. I believe she said, and she is here to testify, I believe she said it would probably

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be upstairs, but she said I could check with the County Attorney's office. I said, "thank you" and walked over to the County Attorney's office and approached Mrs. Shelia Miller of the—

Mr. Jones: Why don't you put them on?

Mr. Avedisian: We will.

Mr. Jones: You are telling what they are going to say.

Mr. Avedisian: I just want to summarize for the Judge.

Mr. Jones: You can be here until midnight if you want to.

Mr. Avedisian: I will try to make it short. She didn't know where it was, and she said that she had typed the arrest warrant, but that probably the search warrant would have been typed upstairs. I came back upstairs. I went into the Circuit Clerk's office, and I approached Ms. Barbara Gregory and asked her the same thing and she didn't know where it was and had never seen one. After that, I proceeded back to the Commonwealth Attorney's office and Mr. Bays and I talked about it. He and I went down to the

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sheriff's office together; and when we left, Mr. Bays informed me that there was no search warrant anywhere. That is all I know about it. Now, this morning, I have a signed search warrant, which has no return appended to it; and it says "a copy—" at the top, "a copy of the search warrant" and it is my position that: 1. The search warrant was not issued prior to the seizure. 2. That if it was, then the seizure went beyond the scope of the search warrant. 3. If it was issued, we want to see the original search warrant and not the copy. 4 . The warrant is too broad in its language because—

Judge: The warrant or the affidavit?

Mr. Avedisian: The search warrant. We are talking about the search warrant. We have no qualms about the affidavit.

Judge: It's all right?

Mr. Avedisian: It is okay so far as I know. The search warrant was too broad, and the seizure went beyond the scope of the search warrant.

Judge: All right.

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Mr. Avedisian: They have, in their possession, custody and control—

Judge: What was your second ground in there?

Mr. Avedisian: The first one was that there was no search warrant—

Judge: You said it wasn't issued prior to the seizure, now what was your second one?

Mr. Avedisian: The second was—

(Reporter read back second ground.)

Judge: You mean beyond the scope of the affidavit don't you?

Reporter: That is not what I have.

Judge: Well, what do you mean, Mr. Avedisian?

Mr. Avedisian: The evidence has—

Judge: The warrant wouldn't go beyond the scope of the warrant. It might go beyond the scope of the affidavit.

Mr. Avedisian: All right, I will correct myself; beyond the scope of the affidavit. What is my third point?

Judge: Well, you want the original if that isn't it. Then the fourth one is that the warrant was too broad.

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Mr. Avedisian: 5. This alleged search warrant, which is the Court's Exhibit No. 3 has not been signed by the officers who performed the search.

Judge: You mean it doesn't show a return?

Mr. Avedisian: That is right. There is no return on the search warrant whatsoever. 6 . The property found by the search is blank. Now, in order to let the girls go—

Mr. Jones: All right, I will tell you what will save some time. We will stipulate that the testimony of Mrs. Miller was that she couldn't find the search warrant down in her office.

Mr. Avedisian: Will you stipulate that what I testified to is correct?

Mr. Jones: Sure. I will stipulate as to what you said Mrs. Miller would testify. We will stipulate that Mrs. O'Nan in my office couldn't find the search warrant. We will stipulate that the affidavit was in my files, or that there was a copy of the search warrant in my file, unsigned. We will stipulate to that.

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We will stipulate that Mr. Bays couldn't find the search warrant down in the sheriff's office—

Mr. Avedisian: Or anywhere else.

Mr. Jones: Or wherever he looked. We will stipulate

that you all couldn't find it, and we will stipulate that Barbara couldn't find it in the Circuit Clerk's office.

Mr. Avedisian: Mr. Jones, you are under oath. Let me ask you this. Who prepared the original search warrant?

Mr. Jones: The affidavit and the search warrant were prepared by my office. And then we made Xerox copies of them. Then I took—

Mr. Avedisian: You mean Xerox copies of the blanks or Xerox copies—

Mr. Jones: Xerox copies of the blanks. Then I took the ones that were prepared, or Xerox copies, of the affidavits and search warrants to Raymond Schultz's office, the County Judge. There, Raymond Schultz read the affidavits. First, he swore me to it; and I signed it, and he signed it. Then he read them and

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walked out of the room momentarily. He came back into the room, and then I presented to him either a Xerox copy or the original of the Xerox copy, they look alike to me, of the search warrant. He read the search warrant and then he signed it. I brought—several of the affidavits were signed. Where they are I don't know. One was brought to my office and put in my file. That is the one you have here.

Mr. Avedisian: That is the one we found in your file.

Mr. Jones: That's right. It was brought to my office. They do have a habit of getting lost. All of them did except the one that I had and the original. That is the reason I had them signed in the original. Then the search warrant, there were several copies of it made. It was signed, in the original, by Judge Schultz. That was given to—

Judge: Was that in your presence?

Mr. Jones: Oh yes. I was present and Ms. O'Nan was

present. Judge Schultz then gave me the search warrant back. I gave the search warrant to

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Sheriff Cole, who then proceeded to fold it up as you can well see, and stick it in his pocket. Then Sheriff Cole and Deputy Sheriff Adams and a number of other officers go out and execute a search and pick up a truck full of stuff. What they did is this. Rather than put the return on the search warrant, Wallace Adams made a list of the stuff that they were taking; which is that yellow sheet. That is his original sheet. That sheet then was brought back with the search warrant and was put on Sheriff Cole's desk in his filing cabinets. So I could see what they seized, Judge Schultz was brought to the Sheriff's office and showed this large quantity of stuff we seized. I directed the sheriff to lock it in the vault. I then obtained from Sheriff Cole the yellow return copy that Wallace Adams did not sign his name to, but which is his return. Then, the search warrant was left with Cole. When I got back in town and found that they couldn't find the original search warrant, maybe the only original signed

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one, I instituted a search in the County Judge's office, County Attorney's office, my office, and the sheriff's office. There, in the sheriff's office, in the wire basket on top of the sheriff's desk, was the original signed search warrant. Somebody has written "copy" in pencil at the top—

Mr. Avedisian: Are you talking about Exhibit No. 3 here?

Mr. Jones: The one that as signed by Judge Schultz.

Mr. Avedisian: That is not an original; that says "copy" on there.

Mr. Jones: That says somebody had written copy on it. I don't know who wrote copy on it. Judge Schultz can

come up, if you want to, and have him to testify, and, if he wants to, say that that is his forged signature, you can prove it if you want to. I'm saying right here that I don't know who wrote "copy" on this, and it doesn't make any difference. There is an original, signed search warrant, 10:07 a.m., April 14, signed by Judge Schultz in the original.

Mr. Avedisian: Who found it in the basket, Mr. Jones?

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Mr. Jones: I did.

Mr. Avedisian: In this basket?

Mr. Jones: I found it.

Mr. Avedisian: When did you find it?

Mr. Jones: I found it Sunday at about 1:30 or two o'clock.

Mr. Avedisian: In the afternoon?

Mr. Jones: Right.

Mr. Avedisian: Do you have any idea who had it?

Mr. Jones: I had an idea—there have been some search warrants—I knew it was somewhere; either the County Judge's office, my office, the County Attorney's office, or the Sheriff's office. Usually we find it in the Sheriff's office because he is the one who executes it.

Mr. Avedisian: Are you aware of the fact that John Bays covered that office already and found that there was evidence—

Mr. Jones: Well, I don't know. Did you go through Sheriff Cole's desk?

Mr. Avedisian: No, I didn't go through the desk. I assume when the man says that there is not a search warrant there, I am going to take his word for it.

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Mr. Jones: Of course John is not a member of the sheriff's office, and he doesn't have any authority to go through Sheriff Cole's desk.

Mr. Avedisian: He was with Sheriff Cole.

Mr. Jones: Mr. Bays talked to him. John did not look in that basket. There it is right there. That is the search warrant.

Mr. Avedisian: Why was the affidavit and the return, so called return, there is not signature on that piece of paper—I don't know whether it is a return or not—Why were those two Exhibits in your file upstairs and the search warrant floating around downstairs some place in the sheriff's office?

Mr. Jones: Because the sheriff uses the search warrant. He doesn't have anything to do with the affidavit.

Mr. Avedisian: What is the customary procedure for your office after the sheriff has made the search and seizure—where is he normally suppose to bring that search warrant and put it?

Mr. Jones: There is no set standard procedure. I usually

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find it down in the Sheriff's office. Sometimes it is in the County Judge's office, sometimes it is in the County Attorney's office. There is no set procedure.

Mr. Avedisian: There is no set procedure on it?

Mr. Jones: No.

Mr. Avedisian: Are you saying to the Court that that search warrant could have been in that basket for the last six months and nobody saw it?

Mr. Jones: Certainly. It has been in there since April 14, no doubt about that. Have you been looking that long for it?

Mr. Avedisian: Yes.

Mr. Jones: I thought you just started the twenty-first of September. Let me say one other thing so there won't be any question about it. The last item on the yellow sheet

was not seized by the Sheriff's office. That is in my handwriting and was brought to my office by you and Mr. May who was an officer of that corporation. Correct?

Mr. Avedisian: Correct. We will admit that.

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Mr. Jones: There is some rule to the effect, Judge, that the failure to adequately make a return on the search warrant doesn't the search warrant. Of course, like any other process, it can be corrected. I would like, at the close of this Hearing, to let Deputy Sheriff Wallace Adams sign that return, and then—showing that he seized those things except that last item.

Mr. Avedisian: We will object to that strenuously.

Mr. Jones: That shows the proper return then.

Mr. Avedisian: I would like to ask, with your permission Your Honor, I believe—John did you take the oath? Isn't it true, Mr. Bays, that you talked with Sheriff Cole about this warrant?

Mr. Bays: Yes.

Mr. Avedisian: After you came out of his office and met with me, we walked back upstairs and you told me that there was no search warrant in affect?

Mr. Bays: I told you that he could not locate it. That there was no search warrant to be found or words to that effect. I told you that I could not find it, I had been through all of these

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offices, and that I had just talked to Mr. Cole, the Sheriff; and he did not know, at that time, what had happened to the search warrant.

Mr. Avedisian: Do you know where this mysterious basket lays down there?

Mr. Bays: I know that there is a basket on the Sheriff's desk. I just talked to the Sheriff and told him what we wanted.

Mr. Avedisian: You didn't look?

Mr. Bays: No, of course I wouldn't do anything like that.

Mr. Avedisian: Are you under oath, Sheriff?

Judge: Yes, he is under oath.

Mr. Avedisian: You are Sheriff Cole right?

Mr. Cole: Yes Sir.

Mr. Avedisian: The copy of the search warrant, which is the Court's Exhibit No. 3, which bears the signature of Judge Schultz, no return made on it, no property return—do you know the document we are talking about?

Mr. Cole: Yes.

Mr. Avedisian: Mr. Jones, the Commonwealth Attorney, said he found it in your basket?

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Mr. Cole: Yes.

Mr. Avedisian: Were you aware of the fact, before he found it on Sunday afternoon, that it was in there?

Mr. Cole: No. I knew we were trying to find it.

Mr. Avedisian: You didn't know it was in there?

Mr. Cole: No, I didn't know it was in there. We were looking for it.

Mr. Avedisian: What do you use that basket for?

Mr. Cole: Numerous things. You know, like a desk would be. You have a number of things. In fact I have one, two—I have a clip board that I have numerous papers on, I have a basket with an upper deck and a lower deck, and there would be papers, ordinarily, on the desk.

Mr. Avedisian: Had you looked in that basket in the last six months?

Mr. Cole: Yes.

Mr. Avedisian: And you didn't see a search warrant in there?

Mr. Cole: Mr. Avedisian, up until recently I didn't look for it.

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Mr. Avedisian: Did you look in that basket when John Bays and I came down, and John asked you about that search warrant? Did you look in that basket?

Mr. Cole: Yes, I looked.

Mr. Avedisian: And it wasn't there?

Mr. Cole: I didn't find it. I found a copy of the return.

Mr. Avedisian: You mean the yellow sheet?

Mr. Cole: No I didn't find the yellow sheet. I found a copy of the yellow sheet. I had seen that there, Mr. Avedisian, for some time. I knew it was there because Wallace Adams, my deputy, normally would put a copy of most anything that we do. Since he filled out the copy of the return I assumed that the search warrant had been already returned to Court a long time ago. I only thought if I had anything at all, it would be a copy of the search warrant.

Mr. Avedisian: Mr. Bays, do you remember what day we went down to the sheriff's office looking for the search warrant?

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Mr. Bays: The date that you made the Motion for—

Mr. Avedisian: For discovery and inspection of the vault?

Mr. Bays: Yes.

Judge: Let him answer now.

Mr. Bays: I believe it was the day before. I believe. I didn't make a record.

Mr. Avedisian: We got an order on September 21, which was a Tuesday; so it would probably have to be on Monday, September 20. Would that be fair because—

Mr. Bays: Yes. You asked for the search warrant, and I endeavored to find it for you by going to the different

offices and talking to the department heads to see if they could find it.

Mr. Avedisian: In other words then, September 20 when we came down, the warrant was not in the basket? Is that right Sheriff Cole?

Mr. Cole: When Mr. Bays came in and told me that they couldn't find the search warrant, at least up here. Well, at that particular time I never really thought about having the search

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warrant. I knew that normally I didn't keep the search warrants. Maybe I would have a copy of it, but not the original. So, I didn't as diligently, probably, look through my papers as I ordinarily would have. I didn't expect to find it.

Mr. Avedisian: This Exhibit 3, is this the copy that you are talking about, a copy of the search warrant?

Mr. Cole: This is a copy of one similar to it that I served on Mr.—

Mr. Avedisian: Where is the original of that document?

Mr. Cole: Well, I don't know unless it is here. Here is the original.

Mr. Avedisian: You said you keep the copy down in your office, right?

Mr. Cole: A copy.

Mr. Avedisian: And you purport that came out of your basket?

Mr. Cole: Not necessarily every time because we don't necessarily have to keep a copy. Sometimes there will only be one. There might not be a copy anywhere.

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Mr. Avedisian: Is this a copy that came out of your basket?

Mr. Cole: I don't know. I know I didn't find the one—

Mr. Avedisian: In other words, you can't testify that Exhibit 3 of the Court is the actual copy of the search warrant that came out of your basket can you?

Mr. Cole: No, I can't say that it is the one that came out of my basket.

Judge: Well, I think really there is no way you could testify to that unless you identified it in some way; which I assume he didn't. Judge Schultz identified it with his signature. That is signature. If you want to, call him and ask him. I would assume that it is either his signature or somebody forged it; one of the two.

Mr. Cole: If I may, I served a search warrant similar to this at I.E.T.

Judge: This could be the one?

Mr. Cole: It could be.

Judge: You are not sure?

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Mr. Cole: No.

Judge: Mr. Adams, is this your handwriting on this yellow sheet?

Mr. Adams: Let me look at it. That is mine all except No. 15 down there.

Judge: Who made the circles on there around some of those numbers? Did you do that?

Mr. Adams: No Sir. Those circles have been put on there—

Mr. Jones: That was put on by us.

Judge: That is your signature?

Mr. Adams: Yes Sir.

Judge: Are you willing to testify that they are the things you picked up?

Mr. Adams: Yes, these fourteen items.

Judge: What did you do with them?

Mr. Adams: They were brought to the McCracken

County Courthouse and were put in the sheriff's vault. Later on that night, they were put in plastic bags, and stored in the vault in the basement. The items are numbered down there like they are on this sheet.

Mr. Avedisian: Judge, I have a couple more points.

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Judge: Okay.

Mr. Avedisian: We also contend and it is our position that the now or never doctrine in the seizure of this evidence does not apply in this case as substantiated by the case of Roaden v. Commonwealth of Kentucky, 413 U. S. 496 (1973) and 37 L. Ed. 2d 757. That the illegal search and seizure was in violation of the Fourth, Fifth, Sixth, and Fourteenth Amendments of the Constitution of the United States, and Section 10 of the Constitution of Kentucky, and Section 1310 of the Criminal Procedure of Kentucky. Another position we are making, Your Honor, is that none of the officers or stockholders of I.E.T. were present or gave permission at the time of the search and seizure made by the sheriff of McCracken County. That's all of my points in connection with the Motion for Suppression. In my final closing statement to the Court on the Motion to Continue, I would like to remind the Court that, due to the fact that this case is not an ordinary one, the usual

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type of criminal case that Mr. Jones prosecutes, because of the agencies involved, and because of the voluminous amount of evidence that is involved, that if the Motion to Continue this case without giving the defense counsel adequate time to prepare properly would prejudice the Defendant; and that a Motion to Continue in this case certainly is not going to prejudice the Commonwealth. To deny our Motion to Continue would definitely prejudice—

Mr. Jones: Before we get off the search warrant—

Mr. Avedisian: I will be through and then you can go back. We have pointed out to the Court that we need at least six witnesses, which we just discovered existed only Thursday, last Thursday, from the evidence as we were going through it; who are vital to the defense of this case. We need the opportunity to go through the remaining evidence, which consists of at least the remaining twenty-eight (28) contracts involving the Indictment to see whether any additional witnesses need to be

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procured for the defense of this case. After all, we are all interested in justice. I don't believe that the Court should prejudice this Defendant because of time in order to find him guilty of something that he may not have done. That is all we are concerned about is to find out the truth. The fact that the Commonwealth's Attorney has subpoenaed some eighty witnesses, in itself, shows that the case is one of great magnitude. And he has the aid of four or five agencies, he has got three or four detectives on his staff, he has got two or three secretaries, he's got the entire courthouse and the entire law enforcement agencies of federal and state governments to help him. To place this kind of burden on the defense counsel, just consisting of myself and my brother Andrew—

Judge: Chief Detective Andrew?

Mr. Avedisian: He is the chief defense counsel. To put that burden on the two of us would be a great hardship on the Defendant because we would just have to close our office for

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four months and work on his case alone. We just couldn't afford to do that. Your Honor, we are certainly asking for a Continuance in this.

Mr. Jones: You didn't make a real diligent effort to look through and see if you had that search warrant did you?

Mr. Cole: No, not thoroughly.

Mr. Jones: Does the fact that the word "copy" was on top of that page—could that have thrown you that it wasn't it?

Mr. Cole: That is possible. I just didn't dream of it being in my office.

Judge: Let me suggest this on the search warrant. On the grounds of an illegal search, it is overruled. I will reopen it in the morning if Mr. Avedisian wishes to get Judge Schultz up and have him testify as to whether or not he signed it. If there is any doubt in the defense's mind that he did, that he didn't understand or read the content, then I think he is entitled to put the evidence on. Otherwise the ruling will stand.

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Mr. Avedisian: We object to that ruling. The search warrant is defective on its face. It has no return signed by the officers, there is no—

Judge: That is overruled.

Mr. Jones: Judge, on this continuance, about that time, this fellow stole more money than the sheriff's budget.

Judge: We'll take that up in the morning. Now, next on the question of the witnesses. Mr. Knapp has had some four or five months to get ready for trial and dig into it to the extent that it could be dug into. The fact that there are some eighty witnesses subpoenaed by the Commonwealth is an indication that it is a complicated case. This is acknowledged. However, I think you probably recognize that some of these are students who, if this is continued, may not be present at the next trial. That is to be considered also. The fact that you have just found some

witnesses that you feel like should be called is acknowledged as being of some interest to * * *

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EXHIBIT No. 21

TRANSCRIPT OF HEARING
(January 24, 1977)

The following is a stenographic transcript of the testimony and proceedings of a hearing held on the above captioned case, McCracken Circuit Court, Division No. I, Paducah, Kentucky, on January 24, 1977 at 1:30 p.m. with the Honorable Lloyd C. Emery presiding.

Honorable Albert Jones, Commonwealth Attorney, for the Second Judicial District of Kentucky, was present and represented the Commonwealth of Kentucky. The Honorable Avedisan and Andrew Avedisan, attorneys-at-law, were present as Counsel for the Defendant.

* * * * * * *

LENA O'NAN, first being duly sworn, when examined by Counsel, testified as follows:

Direct Examination by Mr. Avedisian

Q. 1. Please state your name.
A. Lena O'Nan.
Q. 2. And where do you live, Mrs. O'Nan?
A. Here in Paducah, 616 Holly Drive.
Q. 3. Where do you work?
A. Commonwealth Attorney's office.
Q. 4. Is that McCracken County?
A. Yes.

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Q. 5. And what is your exact position there?

A. I am the Grand Jury stenographer and secretary.

Q. 6. To the Commonwealth Attorney?

A. Albert Jones, yes.

Q. 7. How long have you worked there?

A. About two (2) years.

Q. 8. Mrs. O'Nan, I want to you Court's Exhibit No. 1, and would you kindly identify that for the Court please?

A. Okay, this is an Affidavit for a Search Warrant, and it was dictated to me and I typed it.

Q. 9. Who dictated it to you?

A. Mr. Jones.

Q. 10. Whose signature appears on that?

A. Mr. Jones' signature, and he was subscribed and sworn before Judge Schultz.

Q. 11. On what date was this?

A. The 14th of April, 1976.

Q. 12. Then you say Mr. Jones, the Commonwealth Attorney, dictated that document for you to type. Is that it?

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A. Yes.

Q. 13. After you typed it—how many copies do you make? Do you make an original and several copies with carbon paper, or did you run a Xerox copy?

A. I believe on this we ran Xerox copies on Judge Schultz's copying machine.

Q. 14. In other words, how many originals did you make, just one?

A. I typed one.

Q. 15. Can you tell us how many Xerox copies you made of that?

A. I don't remember.

Q. 16. Approximately how many did you make?

A. I don't believe the copies were made with me. I believe we were in Judge Schultz's office when the copies were made.

Q. 17. Is that right? You didn't make any copies; you just made one original Affidavit. Is that it?

A. Yes. They run copies in Judge Schultz's office. I don't believe I operated the machine though.

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Q. 89. Well, then I've got a puzzling question. If what you are saying is true, to the best of your knowledge and recollection, would you kindly look at the face of both Court's Exhibits No. 3 and No. 4; and do you see any variance in the type of typewriter up at the top and the side of that Search Warrant, especially where the S for Search starts?

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A. Yes.

Q. 90. When you look at both documents; and if one is a photocopy of the other, would you say that they are one and the same Instrument?

A. No, it's not.

Q. 91. Then would you say one was prepared at one time, and that the other one was prepared at another time?

A. It is not a photocopy. I know it is—Search Warrant—It is slanted down. I can see it.

Q. 92. Where it the "S" on Court's Exhibit No. 3?

A. On Exhibit No. 3 it is sort of between the "N" and the "C" at the end of McCracken and the beginning of County.

Q. 93. Okay. Where is it on Court's Exhibit No. 4?

A. On No. 4 the "S" is right under the "K".

Q. 94. Then from what you see in front of you Mrs. O'Nan, would you—can you tell us why the discrepancy? Can you explain that?

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A. No, I can't.

Q. 95. Would anybody else have access to those Search Warrant files or the documents themselves besides you? Would anybody else have typed a Search Warrant up, besides you, in the office?

A. I didn't think so.

Q. 96. Well you know, there is testimony in this case that Court's Exhibit No. 4 was found in a basket on Sheriff Cole's desk one day before our last Hearing, September 27, 1976. Had you ever seen Court's Exhibit No. 4 before that day?

A. Well, when I look at the top of them they are different. I don't know what to say. I know I typed the Search Warrant, and I remember it.

Q. 97. Do you know which one you typed?

A. Well, I know I watched Judge Schultz signing a Search Warrant so I would have to assume that it is the one that he signed.

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Q. 98. Are you positively sure that you saw him sign the Search Warrant in place of the Affidavit? Are you absolutely sure?

A. He signed both of them. They were very particular to make sure that everything was just right. I know I had misspelled Mr. Knapp's name in part of it, and they made sure they corrected that and initialed it and I—

Q. 99. I'm not talking about the misspelling of a name. I'm talking about—well, let me ask you this. Isn't it true that we've got two different documents there?

A. Yes.

Q. 100. Now, Court's Exhibit No. 3 and Court's Exhibit No. 4 cannot be the same document. That is impossible.

Mr. Jones: Wait a minute now. Just a moment. That is a conclusion.

Judge: Mike, you are just like you are Cross-examining. Just ask her straight-forward, honest question.

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Q. 101. Is there any doubt in your mind that as to the fact that Court's Exhibit No. 3 and Court's Exhibit No. 4 are not one and the same document?

A. They aren't identical.

Q. 102. They are not or are did you say?

A. They are not identical, the Search Warrants. The word "search" is put on it in a little bit different place.

Q. 103. That is all I've got.

Cross-examination by Mr. Jones

Q. 1. Now, when—you recall me dictating the Affidavit and Search Warrant?

A. Yes.

Q. 2. It was a rather long Affidavit?

A. Yes.

Q. 3. The original Affidavit, do you recall specifically whether or not someone from my office, and whom I don't know, may have taken the Affidavit for a Search Warrant to another office that had a Xeroxing machine here in the courthouse and made copes?

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A. I don't recall, but that could have happened. When you are in a hurry, you don't always make onionskin.

Q. 4. Then you didn't make onionskin copies of these Search Warrants?

A. No.

Q. 5. The Affidavit for Search Warrant, this par-

ticular one that has been introduced as Court's Exhibit No. 1, shows that the original Affidavit, we have Exhibits. Do you recall that there were Exhibits that were to be attached to it and that were attached to it? For instance, "That affiant has examined on April 13, 1976, a representative number of said purchase agreements. Delivered to him the exact copies of the representative number of which are attached hereto and marked Exhibit B." Do you recall making those copies on a machine and attaching them to the original Affidavit?

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A. We had attachments, yes. I don't know if I actually made the copies or not.

Q. 6. Now this Affidavit for Search Warrant here doesn't have any Exhibits attached to it does it?

A. No.

Q. 7. But the original that was taken to the County Judge's office did?

A. Yes.

Q. 8. Were there other copies of the Affidavits executed downstairs before the Judge, at that time? Do you recall?

A. I believe there were other copies, yes.

Q. 9. Since this doesn't have the Exhibits to it, would you say even though it is executed in the original it is the copy of the Affidavit or the original Affidavit minus the Exhibits that was executed? It is that correct?

A. Yes Sir.

Q. 10. I believe that where Knapp is misspelled there and initialed, that is executed in the original isn't it?

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A. Yes.

Q. 11. So that would indicate then to you that what? That there were—

A. An executed original got the attachments instead of that one.

Q. 12. This is an executed original also minus the attachments?

A. Right.

* * * * * * *

JUDGE RAYMOND SCHULTZ, first being duly sworn, when examined by Counsel, testified as follows:

Direct Examination by Mr. Avedisian

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Q. 34. Was your secretary present at the time you signed it?

A. I don't remember.

Q. 35. Was anybody's secretary there at the time you signed it?

A. I don't recall.

Q. 36. I hand you Court's Exhibit No. 3, Judge, and would you identify that document for me please if you know?

A. That is a Search Warrant, an unsigned Search Warrant.

Q. 37. An unsigned Search Warrant?

A. Right.

Q. 38. I hand you Court's Exhibit No. 4. Would you kindly look at both documents and—

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Judge: Now, before we get into comparison; what is the purpose?

Mr. Avedisian: The purpose, Your Honor, is the fact that we are trying to prove that the Search Warrant that the Commonwealth Attorney produced out of his files, of which we had a copy which was marked Court's Exhibit

No. 3, was never signed by Judge Schultz and that a second Search Warrant was prepared and taken down to him and he had signed the second Search Warrant, which was done after this seizure of the evidence. If you look in the heading of each document, you will see that both documents are not identical.

Judge: You are trying to make him, I presume, a lithographic expert of some kind to differentiate between documents. I think, maybe, that needs to be done in another way.

Mr. Avedisian: All right, Your Honor.

Judge: One question I would like to ask as far as

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No. 4 is concerned. Judge, do you recollect that that was the date that you signed that, the 14th of April?

A. Oh, I couldn't recollect if it was the 14th of April or not.

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EXHIBIT No. 22

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TRANSCRIPT OF PROCEEDINGS—VOLUME I
(February 3, 1977)

The following is a stenographic transcript of the testimony and proceedings of a hearing held in the above captioned case, McCracken Circuit Court, Division No. I, Paducah, Kentucky, on February 3, 1977, with the Honorable Lloyd C. Emery presiding.

Honorable Albert Jones, Commonwealth Attorney for the Second Judicial District of Kentucky was present and represented the Commonwealth of Kentucky. The Hon-

orable Michael Avedisian and the Honorable Andrew Avedisian, attorneys at law, were present as counsel for the defendant.

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Q. Kindly explain again the difference between whether or not Court's Exhibits No. 3 and 5 were prepared at a different time from Court's Exhibit No. 4.

A. I would say that Court's Exhibit No. 4 and Court's Exhibit No. 5, I think, I believe they were prepared at the same time and I think Court's Exhibit No. 3 is a photocopy of Exhibit 5.

Q. If Court's Exhibit No. 5 is a photocopy of Court's Exhibit No. 4, which is a signed search warrant, how did you maneuver, typographically, and like I say, you're an expert in this field, how did you maneuver typographically and photographically, different location of the words search warrant in the two documents?

A. I would say that Court's Exhibit No. 4 and Court's Exhibit No. 5 are copies of the search warrant that was typed and then the words search warrant was typed on them. That's the way it appears to me.

Q. If that's true, then look on Court's Exhibit No. 5 and tell me whether the words search warrant was typed on

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there or whether it is a photocopy of the entire document? Five is what we're talking about.

A. I think it was typed on there.

Q. Court's Exhibit No. 5, the words search warrant were typed on there?

A. Well, it looks heavier.

Q. I'm asking you. I don't know.

A. It's awfully hard to tell. I think it was typed on there.

Q. Look at Court's Exhibit No. 3. Tell us whether the

words search warrant was typed on there or whether it is a photocopy of the entire document.

A. I think it is a photocopy. It looks kind of raised and shiny. It's just hard for me to tell.

Q. From your testimony, wouldn't you say it is obvious that Court's Exhibits No. 3 and 5 were typed and prepared at a different time from Court's Exhibit No. 4?

A. The only thing that looks different to me is that the words search warrant is at a different place.

Q. I'm not asking you what looks different. I'm asking you if they were prepared at a different time.

A. I know that I took the search warrant in shorthand and I typed it and I saw Judge Schultz sign it and I only did it once.

Q. But you don't know which document it was or anything

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about the discrepancies between these three exhibits. Is that right?

A. I found my shorthand notes—

Q. What did your shorthand notes indicate?

A. They indicated that what was dictated to me said McCracken County Quarterly Court, the Commonwealth of Kentucky and then to the Sheriff of McCracken County and so on, and then the words search warrant was not dictated. It is not on my shorthand notes. It is left completely out.

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Mr. Avedisian: Mr. Jones wouldn't question the fact that the person that told him that could possibly be involved in that himself?

The Court: I don't know what Mr. Jones would question him about.

Mr. Jones: You don't go behind the motive of the per-

son that tells us. A lot of people that tell us information for search warrants have got it in for the other people.

Mr. Avedisian: You could indict anybody. What we are doing, Your Honor, is, we are challenging the credibility of the witness upon whose testimony the Commonwealth Attorney has relied in issuing the affidavit. If you don't dismiss this case on the grounds of a defective affidavit on those grounds, then we will have a chance at cross-examination of this witness to establish that

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he is probably the guilty party.

Mr. Michael Avedisian: Your Honor, you mentioned something that I would like to read right now. I think that Mr. Jones will have to prove this. This in Hubsch v. U. S., Federal Court, 256 Fed. 2d 820, and I think when my brother was arguing about the fact of the 516.060 and 516.030 as to the injured party, you have to have an intent to use the instrument to utter it to defraud. I want to see Albert Jones prove that our client used that instrument to defraud someone.

Mr. Jones: That's the matter of the case. Why are we arguing that here. You're going to have an opportunity to put on your case.

Mr. Michael Avedisian: What you're saying is Mr. Grant is the one who's been hurt.

The Court: If you'll take a look sometime under the Digest, Volume 17, Searches and Seizures, 3.6, paragraphs 1, 2 and 3, the supplement in your Digest. That's 3.6, key number 3.6, 1, 2 and 3. In 3.63 there is quite a bit of information in there, including some federal cases, about the fact that an affidavit for a search warrant can be based upon hearsay upon hearsay.

Mr. Michael Avedisian: By whom, that's what I am getting at.

The Court: By the issuing officer. If he believes that there is probable cause based upon the affidavit, and there are

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some rules and they are named here and set forth, then he is justified in doing it. Of course, if he doesn't have probable cause or if a reasonable person, based upon the affidavit, could not determine that there was probable cause to believe that a certain statute had been violated or a certain crime committed, then of course, it's defective.

Mr. Avedisian: You know, what bothers me, Judge, is this. Let's assume that Albert and I go down here and rob a bank. Then Albert goes over to my brother, who is the Commonwealth Attorney, and says, I know that Andy got some goods over at his house. Is my brother's affidavit based upon his information probable cause to indict me?

Mr. Jones: If the affidavit sets out facts rather than conclusions.

Mr. Avedisian: From you.

Mr. Jones: That's the way most of them are.

Mr. Michael Avedisian: That's what we are saying your affidavit doesn't contain, the facts, because we have facts that completely disprove—

Mr. Jones: He just doesn't like the Judge's ruling.

The Court: I still have concluded that the affidavit is sufficient to show probable cause for the issuance of a warrant. Of course, that's subject to your right of appeal.

Mr. Avedisian: We have some things we want to introduce into evidence, Your Honor.

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The Court: Based on what I can find in the law, I believe it to be correct or I wouldn't find that way.

Mr. Avedisian: Your Honor, we would like to turn these into the record in the case as evidence to prove our position as to the affidavit.

The Court: What are those?

Mr. Avedisian: Here is a contract, signatures verified by the students, that the signatures that were contained on ten of those affidavits. Acknowledgements that their signatures were true signatures on the tuition agreements that Mr. Jones is using in the 41 count indictment. I would like to submit this to the Court and have it marked as Court's Exhibit No. 9.

The Court: You're talking about the counts in the indictment, not the affidavit for search warrant.

Mr. Avedisian: That's right.

The Court: The question is not which ones are authentic, the question is whether any might be forged.

Reporter marks exhibit

The Court: Are there any other points respecting the affidavit and its validity or invalidity that you wish to state that I have not ruled on? If so, I would like to get those in the record.

Mr. Avedisian: I would like to get the rest of the exhibits in, Your Honor, if I may. This is Dealer Review, by Mr.

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Donald E. Edwards, Branch Manager of Associates, to Mr. F. B. Albert and I would like to get this into the record as Court's Exhibit No. 10. This all goes to the issue of the injured party, Your Honor.

Reporter marks exhibit

The Court: I am sure there are some uninjured parties, but that is not for us to decide right now.

Mr. Jones: This goes to the defense of the matter.

Mr. Avedisian: Here is an agreement between Associates and Electronic Sales Engineers, Inc. which I would like to submit as Court's Exhibit No. 11, evidencing the fact that neither party was injured and both want to settle their differences. That's number 11.

Reporter marks exhibit

Mr. Jones: Where are these from, so we'll have some knowledge about them. I think, in order to introduce anything into evidence, you have got to establish where it came from.

The Court: What is the purpose of putting these in evidence. Do they have to do with the affidavit and search warrant?

Mr. Avedisian: That's right, Your Honor, and I'll testify to the fact that these are true copies of the documents that we procured from your office from your files under discovery and inspection, from your files.

Mr. Jones: Seized or otherwise.

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Mr. Avedisian: Seized or otherwise.

The Court: You are entitled to anything they have in there. Whether it is exculpatory or incriminating.

Mr. Avedisian: Here is evidence of the fact, a chart of Associates for 1976 showing that in October of '76 their debits and credits between the two companies would be wiped out, as far as injured parties are concerned. This is a proposed repayment income settlement.

Mr. Jones: Is this something you and Associates worked on prior to the State getting into it?

Mr. Avedisian: No, we found these in your files.

Reporter marks exhibit

Mr. Jones: Who prepared this agreement to be filed?

Mr. Avedisian: The attorney for Associates.

Mr. Jones: Did you acknowledge that agreement?

Mr. Avedisian: I acknowledged the agreement.

Mr. Jones: In other words, you had seen it before you copied it from my files?

Mr. Avedisian: That's right.

Mr. Jones: Did you have a copy of it?

Mr. Avedisian: Yes, I have a copy of it.

Mr. Jones: I mean, did you have a copy before you got it out of my office?

Mr. Avedisian: I saw it. I think I have got a copy in my file. Here is part of the same deal and I want to introduce

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it where it establishes that Associates owes Mr. Knapp $183,890 and that's Exhibit No. 13.

Reporter marks exhibit

Mr. Jones: Does this concern negotiations that you were carrying on with Associates for repayment on behalf of Mr. Knapp?

Mr. Avedisian: No, this had nothing to do with negotiations.

Mr. Jones: It says here, I believe the agreement calls for semi-annual settlement on this.

Mr. Avedisian: That may have been prepared after the time that we got together to try to settle their debits and credits. We never knew or even dreamed about the fact that $183,890 was payable to Knapp, and it says, he doesn't have to know about this.

The Court: I think we are getting off on something else. We are getting on defense now.

Mr. Avedisian: I'm going right now as to the injured parties, Your Honor, is what we are doing right now.

The Court: Do we have any more questions respecting the affidavit or the search warrant or the search warrant that need to be reserved?

Mr. Michael Avedesian: I believe Andy has something there that he wants to tell you about.

Mr. Andrew Avedisian: Getting back to the probable cause—

Mr. Jones: Your honor, they've been over all this.
The Court: I know, they want to get it into the record.

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EXHIBIT No. 23

TRANSCRIPT OF PROCEEDINGS—VOLUME II
(February 3, 1977)

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Mr. Avedisian: There's a little evidence that we had left out and I think that it's pertinent and if it's not, I think the Judge will make his ruling accordingly. On page 72 of the transcript, Mr. Jones admits that the Associates are the victims. And therefore, it is our contention by the said admission that he is admitting that the contracts were between Associates and the IET and not the students. Accordingly, there is no way the students can be the victims of any alleged violation of law here. That's page 72 of the transcript. On page 83 of the transcript, Judge, he stated, if we've got a question as to whose contract it is and Associates in some way—it is their contract rather than IET's, then we have a new ballgame.

Mr. Jones: Perhaps.

Mr. Avedisian: Perhaps, but we think, but I want to get it in the record that we are stating that the evidence without any doubt will prove that the students were not part of the contract and that the contract was between IET and Associates and I want proof again on how the devil they got hurt by the alleged offenses that's been charged against IET.

Mr. Jones: On February the 14th and 15th, we will be more than glad to show them the proof.

Mr. Avedisian: What I'm concerned about is this. Whether you

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had probable cause. I'm attacking the fact that you didn't have probable cause because I don't personally feel that you can prove that on February 14, 15th, 16th, 17th, 18th, and even on Sunday, the 19th.

Mr. Jones: But you're not going to make that determination. Twelve jurors are going to make that determination.

The Court: Subject to an appeal, if one is necessary. You realize that all these cases on search and seizure don't come about when a search is ruled invalid by a trial judge. They come about because they are ruled valid and subsequently, after a trial, they are found to be in error and obviously, hopefully I'm not commiting any. I certainly would not do that intentionally. What I'm trying to do, to the best of my understanding, is to follow the law, but, of course, that's subject to appeal at the appropriate time.

Mr. Jones: It's not a question of that, Judge. An honest man wouldn't be afraid of the records.

The Court: All right, let's get on. Is there anything else on the affidavit or search warrant?

Mr. Avedisian: I don't believe so.

The Court: We've got quite a few motions otherwise pending and if you would like to take those up, let's get into them.

Mr. Avedisian: There are 21 motions all together. Your honor, do you want to rule on those motions before you hear

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the testimony of the Sheriff and the—

The Court: If you want to call the Sheriff for the reasons that I mentioned, that's fine. What do you wish to

prove by the Sheriff? If you wish to prove that the documents were not located until a certain date, I think I can already rule that this is true.

Mr. Avedisian: I don't know what I'm going to prove or disprove, Your Honor, because I don't know what his testimony is going to be.

The Court: He has already testified in the transcript. I just wondered what additional you might have in mind.

Mr. Avedisian: Your honor, I think that we need to get the witness on that can testify as to that yellow sheet of paper which is Court's Exhibit No. 2 and find out who prepared it and where it came from and what it is.

The Court: That's fine. Do you know who to question about that?

Mr. Avedisian: We would like to call Wallace Adams.

The witness, WALLACE ADAMS, being first duly sworn, testified as follows:

Questioning by Mr. Avedisian

Q. Would you state your name, please.

A. Wallace Adams.

Q. What is your home address?

A. Route 6, Clinton, Road.

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Q. Kindly tell us your occupation.

A. Deputy Sheriff of McCracken County.

Q. How long have you worked in this job?

A. I have been a deputy sheriff seven years.

Q. Could you just generally describe your duties and responsibilities?

A. As a deputy sheriff?

Q. Yes.

A. At the present time I am a sergeant in charge of the weekend and night shifts.

Q. Are you familiar with search warrants and returns that you make after you execute a search warrant? Are you familiar with those documents and those procedures?

A. I have served a few.

Q. When you say a few, are you well experienced or is your experience limited?

A. We don't serve that many search warrants. Most of ours is criminal process and civil warrants.

Q. Well, then, in the last seven years, would you tell us how many search warrants have you served, approximately?

A. Probably I have been in on at least about a half dozen.

Q. Half a dozen search warrants in the last seven years?

A. Yes.

Q. Has anyone challenged your method of searching the premises or the validity of the search or anything, or

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the validity of your returns? Have you been questioned about it before this case?

A. Every time.

Q. I hand you Court's Exhibit No. 2 and I want to ask you about that. Would you kindly describe that for me, identify it for us and tell us what it is?

A. This is a sheet of yellow legal paper that was used out at IET school on the day that it was searched. This is my writing except for item number 15. The first 14 items are in my handwriting. I was stationed at the door and my job was to give each box and item that was taken out of there a number and write a description of what was in that box on each box and this sheet describes what we took and item numbers as they were given to those items.

Q. Does that sheet of paper have a date on it?

A. Yes, sir, April 14, 1976. It's 4-14-76.

Q. That's the date that you prepared that document?

A. Yes, sir.

Q. It there a signature on that document?

A. No, sir.

Q. Would you kindly read into the record what you seized at the school on that date and what your return indicates.

A. Item number 1, recent graduates and accounts receivable.

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Item number 2, corporate records, then there's a colon. Tara Treasurer, General Investments, personal bank statements and in parenthesis is the word Knapp, Item number 3 was a file drawer, contains student registration cards. Item number 4 was a small file box of student record cards. Item number 5 was a file drawer, accounts receivable. Item number 6, cancelled checks for 1973. Item number 7, cancelled checks for 1972. Item number 8, cancelled checks for 1975 and '76. Item number 9, cancelled checks for 1974 and '75. Item number 10, receipt books, 1974 through '75. Item number 11, college work study payroll books, 1970 through 1975. Item number 12, IET payroll books, 1975 back through 1967. Item number 13, receipt and disbursement books, 1976 back to 1964. Item number 14, student files and pay cards, receipt books, 3-29-71 through 5-22-72, and then there is an item 15 which is not mine.

Q. Do you see any staple marks on that document anywhere?

A. No, sir, I don't.

Q. Do you see any other type of holes or marks or puncture marks on that document?

A. It has two holes at the top.

Q. What does that indicate to you?

A. I don't know. They weren't there originally.

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Q. They weren't?

A. No, sir.

Q. I hand you Court Exhibit No. 4. Have you ever seen that document before?

A. This specific document?

Q. Yes.

A. To read it before today, I don't know.

Q. What is it entitled?

A. It is entitled McCracken County Quarterly Court, Search Warrant, Commonwealth of Kentucky.

Q. Would you turn to page two and tell us who signed that?

A. It's signed by Raymond C. Schultz.

Q. Would you look under his signature and tell us what you see there?

A. Raymond C. Schultz, Judge, McCracken County Quarterly Court.

Q. What's underneath that?

A. Return and officers.

Q. Do you see any return there executed by any officers?

A. No, sir.

Q. After you made Court Exhibit No. 2, what did you do with it?

A. This Exhibit No. 2?

Q. Yes.

A. It was left at the Sheriff's office with the search

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warrant, a copy of what was supposed to be the search warrant.

Q. You said you had never seen that search warrant

before, I was wondering when did you first see this search warrant.

A. That one there?

Q. Court's Exhibit No. 4.

A. I did not have the search warrant the day we went out there. I heard it read but I did not see it or touch it.

Q. Who did you hear read it?

A. The Sheriff himself.

Q. Did he go with you?

A. Yes, sir.

Q. You heard him read the search warrant?

A. Yes, to Mr. Campbell, yes, sir.

Q. To Mr. Campbell?

A. Yes, sir, to Mr. Campbell.

Q. And you say when you came back to the courthouse, what did you do with Court's Exhibit No. 2?

A. This item was left with the items that had been seized in the Sheriff's office.

Q. Did you just lay it on the boxes there or what?

A. No, sir, it was left laying on the counter and the boxes were sitting below the counter.

Q. When was the next time that you saw that document?

Q. Yes, Court's Exhibit No. 2.

A. At the time that it was handed to me here before at the hearing.

Q. Which hearing was that? There was one on September 27, 1976 and then there was one on January 24, 1977.

A. This would be in September.

Q. September of '76 was the first time you saw it?

A. Since the day I prepared it.

Q. You prepared it on what date?

A. April 14, 1976.

Q. Between April 14 of '76 and September 27, 1976, do you know where that document was kept?

A. No, sir.

Q. Court Exhibit No. 2?

A. No, sir.

Q. I hand you Court's Exhibit No. 4, which is the allegedly signed search warrant, and I want you to look in the body of that search warrant and tell me if you see in there a command to you and the Sheriff to seize accounts receivable of recent graduates.

A. It says list of students who have attended or are attending or purported attending the Institute of Electronic Technology.

Q. That's a list of the students attending, but do you see anything in there about accounts receivables?

A. The records of each student at the Institute of Electronic Technology.

Q. Which number is that?

A. Number 6.

Q. What does that signify to you, records of each student?

A. To me that would signify anything that pertained to any particular student. It's quite broad.

Q. You mean, any kind of records?

A. Yes, that pertained to each individual student at the Institute of Electronic Technology.

Q. Just soup and nuts, whatever it is, the record, you've got to seize. Is that it?

A. You could take it that way.

Q. How did you take it?

Mr. Jones: Judge, I object —

Mr. Avedisian: I would like the witness —

A. I didn't make the decision of which records to take and which records not to take.

Mr. Avedisian: Your Honor, I don't want any interference from the Commonwealth Attorney. I would like the witness—

The Court: He can object.

Q. Let me ask you the next question, Deputy Wallace, do you see anywhere in the search warrant that gave you

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authority to seize corporate records of Tara Treasurer and the partnership of General Investments?

A. Not those specific items, by that name.

Q. Then I show you number 2 on your return. Did you or did you not in fact seize those records?

A. These items were all taken.

Q. Number 2, what does that read?

A. Tara Treasurer is what I've got down.

Q. It has corporate records in front of it, doesn't it?

A. Corporate records.

Q. And also General Investments?

A. Yes.

Q. Do you see anywhere on Court Exhibit No. 4 the authority for you to seize file drawers of student registration cards and student record cards?

A. 4, 5 and 6 apply to students, list of students who have attended, are attending or purported attending and number 5 says student roster list of said institution and number 6 says records of each student at the Institute of Electronic Technology.

Q. You also have on your return as item number 5 a file drawer of accounts receivable. Do you find that on there anywhere, in the search warrant?

A. Of course, I'm not familiar with all these records. Number 1 says bank deposit and record of the Institute

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of Electronic Technology and the account of Jerry A. Knapp or both.

Q. But do you find anywhere in the search warrant, specifically designated, a file drawer of account receivables?

A. Not a file drawer, no, sir.

Q. Not a file drawer of accounts receivables?

A. No, sir.

Q. Numbers 2 and 3 in the purported search warrant marked Court Exhibit No. 4, where it says cancelled checks of the bank account of the Institute of Electronic Technology and the account of Jerry A. Knapp or both, and item number 3, checkbook stubs on said accounts which show disbursements of moneys of said accounts. On 2 and 3 in that search warrant, is that search limited to any period of time that you can tell us that is indicated on that search warrant for a list of cancelled checks and checkbook stubs?

A. It doesn't have any specific date or time.

Q. Would it be your conclusion, as deputy sheriff, to go in there and seize just any and all cancelled checks and checkbook stubs, regardless of the period of time that it involved?

A. I think that's what it implies.

Q. If you found cancelled checks and checkbook stubs for the last twenty years, you would have seized them

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wouldn't you, under those orders in that search warrant?

Mr. Jones: Object to the question. That's not what is in issue, 20 year old records.

Q. Wouldn't you have seized them?

The Court: The objection is sustained.

Mr. Michael Avedisian: Your Honor, the purpose of the question, I think, is this. If the Commonwealth At-

torney decides at the trial to use any of the excess records that he obtained, we would strongly object to it.

Mr. Andrew Avedisian: And furthermore, Your Honor, I think there is plenty of law on this point to the effect that the items seized must be specifically set out. There is no question about that in the law. You can't just go out here and make a search warrant as broad as the one that we have under Court Exhibit No. 4 and get away with it. And that's what I'm trying to show, Your Honor. So if you have sustained his objection, I'll take exception to it.

Q. Do you see anywhere in that search warrant an item that you seized, which appears as item 10 in your return on Court Exhibit No. 2? Do you see any authority for this seizure, which reads, receipt books for 1974 and '75, anywhere in that search warrant marked Court Exhibit No. 4?

A. It could depend on who those receipts were to. If

they were receipts to students, they were seized.

Q. All I'm asking you, Mr. Adams, is —

A. I think it would be covered on that broad statement of the records of each student at the Institute of Electronic Technology.

Q. Is that where you are throwing it in?

A. If they were receipts made out to students there —

Q. You are throwing it into number 6. Is that it? Is that a catch-all clause in that search warrant? Is that what that is?

A. If there is one, it probably could be that.

Q. That's your interpretation of what it would be? Catch-all, catch everything?

A. I think it would cover that part there.

Q. Looking at that same search warrant, do you see anywhere in there where it would authorize you to seize

college work study payroll books from 1970 to 1975? These are payroll books.

Mr. Jones: Concerning students?

Mr. Avedisian: I don't know, the return doesn't say so. I'm just reading Court Exhibit No. 2, Mr. Jones, item 11.

Mr. Jones: You said it was payroll books.

Mr. Avedisian: It says college work study payroll books, 1970 to '75.

A. Those concern students.

Mr. Avedisian: It doesn't say so. I'm ask you whether you see this specific designation on that search warrant. Read number 11 on Court's Exhibit No. —

The Court: Whether he sees it or not is sort of immaterial. Is it there or is it not there?

Mr. Avedisian: That's what I'm getting at? Is it there or isn't it?

A. The words work study college payroll books are not on this sheet.

Mr. Avedisian: That's what I'm trying to find out.

The Court: I don't think you have to find that out. You can probably look at it and tell.

Mr. Avedisian: Your Honor, I'm doing it for the Court's benefit.

The Court: The Court doesn't need the benefit. I understand what's on there. I've got a copy of it right here and I can see what's on there. There is no problem so for as the Court is concerned. As a matter of fact, you've put that yourself as an exhibit, Court's Exhibit No. 4 to your motion to suppress. It's right here in front of me.

Q. As long as the Court is aware of what I'm asking about, let's suspend with that line of questioning and let me ask you this. I'm handing you back Court Exhibit No.

2, which was prepared by you, you stated in your testimony, and my question now is, did you make a copy

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of that Court Exhibit No. 2 after you wrote it up, and if you did, how many copies did you make?

A. Did I make a copy of it?

Q. Yes.

A. No, sir.

Q. You did not make a copy of it?

A. Not that I recall.

Q. Photocopy or carbon copy or anything?

A. Not that I recall.

Q. Do you have any explanation as to why you made your return on that yellow sheet of paper there without signing it instead of placing it on the back of the search warrant where you are supposed to put it and signing your name to it? Is there any reason for your not doing it on the search warrant?

A. Yes, this was going to serve as a receipt for Mr. Campbell.

Q. I am handing you Court's Exhibit No. 4, page 2, and there is nothing there in the return. Is there any reason why you didn't put it on the search warrant instead of putting it on this piece of paper?

A. Mr. Campbell was going to make him a copy of this. This was going to serve as his receipt.

Q. This is what you are referring to?

A. Yes, the yellow sheet.

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Q. Who is Mr. Campbell?

A. He is the man who said he was in charge of IET the day the search warrant was served.

Q. Does he control what you do as to your service of process and proper return?

A. He requested a receipt and my job was to stand at the door and record the items that were seized.

Q. But you still didn't tell me why you did not place—

A. I did not have this.

Q. You did not have court Exhibit No. 4?

A. No, sir.

Q. And you say, where was it?

A. The Sheriff had it, the search warrant.

Q. That's the reason why you didn't write it on the return. Is that right?

A. Yes, sir. I did not have that.

Q. What was the date you made this search?

A. April 14, 1976.

Q. Is there any particular reason why you didn't sign this piece of paper, Court Exhibit No. 2?

A. No, sir.

* * * * * * *

The witness, HAL COLE, being first duly sworn, testified as follows:

Questioning by Mr. Avedisian

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Q. Do you normally keep a search warrant in your office after it is executed?

A. No, sir.

Q. There would be no reason then, would there, to keep a search warrant in your office after execution, would there?

A. Not ordinarily. Maybe for a day, the next day, following day, or if it was on the weekend, we may need to make a return and get it back to the Judge.

Q. Would there be any particular reason for you to retain the return of the search warrant in your office and deliver the search warrant to some other office within the

courthouse? Would you separate the two of them or would you send the two of them together? Would there be any reason for you retain the return, Court's Exhibit No. 2, down in your office, and surrender Court's Exhibit No. 4 to another office within the courthouse?

A. There might be a reason for retaining something with the amount of stuff that was confiscated here.

Q. But that's the original, isn't it?

A. Yes.

Q. And there are no copies to Court Exhibit No. 2. Correct?

A. No, sir, but I could see where, with the amount of

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stuff that was taken. You know, even you came to my office and went down there to look for some things that was in question because we didn't know either that the things that you had in question was among the items. So there were so many things here, so many documents here, that I could see where that this would be an abnormal amount of merchandise, maybe, to go over maybe for several days before we would even have made a return back to the court.

Q. And because of the abnormality of the evidence and records that you seized, are you saying it would give you probably the right to keep the return, which is Court Exhibit No. 2, down in your office and surrender the search warrant to some other authority within the courthouse?

A. No, not some other authority. The return would go to one authority, depending upon where it originated.

Q. Who is the authority?

A. Normally it would be the County Judge, Quarterly Court.

Q. Did Albert Jones come down to your office and

pick up the return which you hold in your hand subsequent to the search?

A. I don't recall.

Q. Sheriff Cole, would you say that in your last four years of conducting the affairs of the Sheriff's office

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down there, would this practice be normal or abnormal in placing the return on a yellow sheet of paper like you have as Court's Exhibit No. 2 in lieu of placing it on the back of the search warrant where there is a place provided for that and signed by the officer returning the same? Which is the normal procedure in your office?

A. I would say that because of the abnormal quantity involved here, it is better to be put on a document like this, because there is not really room on the normal search warrant.

Q. If there isn't room, how many items appear on the Court Exhibit No. 2 for the return?

A. Fourteen.

Q. Would you kindly count the number of lines on the search warrant?

The Court: I think that's all in evidence.

A. There's nine.

Q. You don't think the information contained on the yellow sheet would fit into it?

A. It could have been added on there. It could have been. I can see that it could have been.

Q. Should it have been signed by the officer making the return on the yellow sheet there? Should that have been signed by the officer?

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A. Yes.

Q. I have to read you this piece of testimony because you don't remember Albert Jones coming down to your

office to pick up that yellow sheet, so I'll have to read this to you, Sheriff, to see if you can explain this for us. It is on page 102, Mr. Jones states in the hearing of September 27, 1976, on page 102, I directed the Sheriff to lock it in the vault. I then obtained from Sheriff Cole the yellow return copy that Wallace Adams did not sign his name to but which is his return. Then the search warrant was left with Cole, which is Court Exhibit No. 4. When I got back in town and found that they couldn't find the original search warrant, maybe the only original signed one, I instituted a search in all these different offices. Now he's stating that the search warrant was left in your office. Why would he come down and pick up the yellow return and take it back up to his office and leave the search warrant with you? Can you explain that?

A. Possibly because the search warrant originated from the quarterly court and he could have felt like it was my duty to make the return and return it to the quarterly court.

Q. But didn't you testify that the normal procedure is to put the return on the back of the search warrant where

the space is provided?

A. Yes.

Q. Wouldn't it be reasonable to conclude that the search warrant and the return should remain together?

A. Normally, yes, sir.

Q. Could you give us a further explanation on the question. Why would he want to separate the return from the search warrant if there was a search warrant in existence?

Mr. Jones: I object to the question. How can this witness answer a question why I would have done something?

A. I'll answer the question. I don't know, Mr. Avedisian.

Mr. Avedisian: That's all I wanted to know. Okay, Sheriff, that's all.

* * * * * * *

The witness, JOHN BAYS, being first duly sworn, testified as follows:

Questioning by Mr. Avedisian

Mr. Avedisian: In the basket on his desk. It was in the basket on his desk and he looked casually through the basket and said, it's not in here.

Q. Did he look in both tiers?

A. I can't be—my memory is not that vivid at this time and I can't be for sure. I knew that several papers came out of there and several papers went back in, but

just to tell you that he looked at every paper would be impossible, I don't know.

Q. Did he at any time during the conversation or discussion tell you that the feds were in on this case and that they had removed several pieces of evidence that he had seen and that because of the fact that there was no search warrant in effect that he could not help us in any manner at that time?

A. I can't remember that.

Q. Any words to that effect?

A. What I remember and this is in a general way, was that you, I believe, and I suppose that it was that time, I think it was that time, you wanted to go into the vault and I went to the Sheriff, which probably was on that occasion, as far as, to the best of my recollection, and advised him or informed him that you, the defense attorney, wanted cer-

tain things out of the, wanted to go into the vault and view certain things. Mr. Cole and I told him that my authority to do that was on permission of Mr. Bryant, who told me to take you down.

Q. Who is he?

A. Assistant Commonwealth Attorney. He is the one that told me to go down and get the Sheriff to go into the vault and let you see anything in the vault that

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pertained to this case and I took this matter up with the Sheriff and he was hesitant. He said, I don't have authority to do that. I need some authority. I'm not sure that I have the authority to go in there and he, at that particular time indicated that until he was sure of himself, and this is in substance again, that he wanted something to protect himself before he consented for you to go in there and view the matter. So that's the general substance of the events that occurred at the time that you have reference to in the Sheriff's office. At the time he looked for the papers.

Q. He did not find the search warrant?

A. He did not find the search warrant.

Mr. Avedisian: We are through with our witnesses.

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The Court: Let's take up these motions.

Mr. Jones: There are 21 of them, Judge. I have categorized them as to when they were filed. September 2, September 17, September 21, December 8 and December 12.

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Mr. Avedisian: That's an exhibit in the Court, my friend.

The Court: I just thought he might like to see it.

Mr. Jones: No, I don't even know who made that.

The Court: Give it back to Mr. Avedisian. Of course, the point is that obviously he's not going to be tried, at least I would assume the Commonwealth is not going to try him on a valid contract. I assume he has contracts that he feels like are invalid.

Mr. Jones: If we can't prove they're invalid, they are forgeries, if we can't prove that they are forgeries, as to that particular contract, you can't give an instruction on it at the trial.

The Court: No way. I can't see it any other way except to overrule your motion and supplemental motion on discovery and inspection because I don't know of anything he has tried to suppress.

Mr. Avedisian: Your Honor, we take exception to the ruling.

Mr. Jones: Is that the motion for bill of particulars and the supplemental motion?

The Court: Yes. Show that the motion of the defendant dated September 2, 1976 for writ of venire facias is overruled because the information that he has requested is available in the clerk's office and has been all along

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and will be for any trial, including this defendant's.

Mr. Jones: Except the information concerning the, I don't know whether you made a supplemental motion on that or not?

Mr. Avedisian: Venire facias, no, I didn't.

Mr. Jones: That jury has been discharged.

The Court: Well, we've got another one and there is a list in there because they have all been drawn in open court and the list has been made up. Of course, we don't know who is going to be here yet. Some of them might turn out to live in another county and some of them might be dead.

Mr. Jones: You don't know their occupations or anything until you get the information sheet.

The Court: You can get that information on the first day of the term. Now, we've got a motion for discovery and inspection dated September 2 and then there's another one similarly entitled dated September 21.

Mr. Jones: He's got one dated September 7, supplemental.

The Court: I think they are the only two that have to do with discovery and inspection, are they not?

Mr. Jones: Right, that's another motion. One was dated September 2 and one was dated September 21, 1976.

The Court: That was overruled previously based on the fact that they have all the information.

Mr. Avedisian: Your Honor, there is some evidence in the County

Mr. Avedisian: And we haven't gotten them yet.

Mr. Jones: Let me tell you something. You have gotten a hell of a lot more than you would have gotten.

Mr. Avedisian: We're arguing that he should have produced this information in response to this motion for discovery and inspection.

The Court: In which motion do you ask for that specifically?

Mr. Avedisian: It's not specific. It's in our motion generally.

The Court: It's not specific, that's the point. It's not referred to in either one of them, that I can see.

Mr. Avedisian: We don't have it specifically itemized, no.

The Court: Did you have a motion in December for that?

Mr. Avedisian: No, back on September 21, 1976.

The Court: I have one then and I have one on September 2.

Mr. Avedisian: And then in December of '76 the defendant and I asked the Commonwealth Attorney if he would let us look at those acknowledgments in the third drawer down in his office and he said he wouldn't let us in that drawer but he would look himself and let us know whether he would allow us to look at it. That's the last we heard of it.

Mr. Jones: They must have been in there, they know they're in an there and I don't. How did they know that they are in there if they haven't been in there?

Mr. Avedisian: We don't have a copy of them.

I think we need to see them before we go to trial.

Mr. Jones: Are you saying that Mr. Knapp, let me get this straight, didn't copy the things that these guys said on those little half sheets of paper in with the contracts? You didn't copy those when you copied the contracts?

Mr. Knapp: We are talking about the affidavits that Associates had the students sign at their place.

Mr. Jones: Those little half things?

Mr. Knapp: No, that's a verification slip that they signed at the school that they were students there. This is the material we asked you for the first week in December.

Mr. Jones: I don't know that we have them.

Mr. Knapp: You have them, we found a list of them.

Mr. Jones: Where is the list?

Mr. Knapp: It's in that third drawer that you won't let us into, in the cabinet over there.

Mr. Jones: You want some affidavits that Associates took from students. And you say we have some in there?

Mr. Knapp: Yes. We told you that the first week in

December when I was over there and you said if we've got them, we'll send them to you.

Mr. Jones: I don't know of any.

Mr. Avedisian: Based upon the fact that this is February 3 and we haven't been able to acquire that information that

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are in there, but you say they're in there.

Mr. Avedisian: When do you think we can find out whether they are in there or not?

Mr. Jones: Tomorrow.

Mr. Avedisian: All right then, the defendant and I will come to your office tomorrow to see whether they are in there.

Mr. Jones: Sure.

Mr. Avedisian: If they are not in there, Your Honor, I want to renew my motion to dismiss the case.

Mr. Jones: If they are not in there, we don't have them. You say they're in there, so you must have seen them. I don't know why you didn't copy them.

Mr. Avedisian: Mr. Commonwealth Attorney, the machine broke down and we couldn't copy them.

Mr. Jones: There are ten machines here in the courthouse probably.

Mr. Avedisian: We like the Apeco.

The Court: I don't think we are going to worry about the machine breaking down in the evidence here because you all used my machine some and I told you you could use it at any time. I don't think that's going to be a problem. Motion for return of certain records, September 21.

Mr. Jones: What are you going to do with his discovery motion?

The Court: Overruled, with the exception that if you

do have something that shows verification as to whether or not these people said that it's their signature, I think

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they are entitled to it.

Mr. Jones: I think you are right.

The Court: I don't know if you have it or not, but they say they saw it.

Mr. Jones: Why didn't they copy it? It hasn't been denied them.

Mr. Knapp: You would not let us in there. You wouldn't allow us in those drawers.

Mr. Jones: No, I got tired.

Mr. Knapp: You said, You're not getting back in those drawers.

Mr. Jones: No, and you're not getting in them.

The Court: If you have anything that shows verification of these signatures as to whether or not these—

Mr. Jones: They have the verifications.

The Court: I'm talking about the ones they are talking about here. Apparently there are two different verifications.

Mr. Jones: These others that were with those things were made by Associates.

Mr. Knapp: Can I show you what I'm talking about? You know what the verification slip looks like?

Mr. Jones: Yes.

Mr. Knapp: All right, his name, his address, how much he financed, how much balance. This is the one that we started out with. This is what they look like, except most of them are filled in. He wouldn't sign his. Most of them are signed.

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Mr. Jones: Do you have copies of those?

Mr. Knapp: I only got this one. But what I'm talking

about is all these people, this is a list we found in there, but we didn't have time—

Mr. Jones: What is this?

Mr. Knapp: This is a part of the list of people that signed the affidavits. We want a copy of these that are signed by the students.

Mr. Jones: You mean statements, not affidavits. An affidavit is a sworn thing. Did you see some sworn statements in there?

Mr. Knapp: No.

Mr. Jones: Is this not those little things—

Mr. Knapp: No.

Mr. Jones: If I've got anything like that I will be glad to give it to you. What you're talking about is a statement that the student gave Associates that they did not sign.

Mr. Knapp: That's right.

The Court: Apparently they were made at Associates whereas these other slips were made at the school.

Mr. Avedisian: Your Honor, would it be all right with you then if the defendant goes to the Commonwealth Attorney's office in the morning by himself without me being present there?

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Mr. Jones: I don't object to that. He and I get along fine. I'll look for these things and if I find them, he will be permitted to copy them.

The Court: Come over about ten o'clock. Let me suggest that. You all get together and find those if they are there. Let me suggest this now, I don't want to see any reversible error committed and if there are documents of some kind in your possession that they do not have access to or are not provided, of course, there are so many records that unless they are specific, I don't know how you would

know it. There are so many records of so many different types, but they have been specific about these records.

Mr. Jones: What he's talking about are statements, not affidavits.

Mr. Knapp: Signed statements.

The Court: They are entitled to them because they presumably could be usable in defense for cross-examining witnesses. And I think they are entitled to them. I think failure to give them to them would be reversible error.

Mr. Jones: They are not entitled to discover the work product of the commonwealth Attorney's office, in addition to—

The Court: No, I'm talking about right now these things Associates obtained signatures on of the students who stated, and I guess it was a statement, that this was their signature, or that it wasn't their signature, or whatever.

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Mr. Jones: If they are there in my office, they will be entitled to see them. There is a limitation, of course. You know, that's a broad statement, that they can have anything in my office.

The Court: We've got this motion for the return of certain records dated the 21st of September and I think we had some discussion about that previously and purportedly that was all furnished, that was my understanding, that it had been.

Mr. Avedisian: What was that?

The Court: Motion to return certain records.

Mr. Jones: That doesn't have anything to do with the trial of the case.

The Court: I know, but I want to clear all of them up.

Mr. Jones: You're overruling it because they've got it?

Mr. Avedisian: We were able to obtain photocopies of

the books and records and ledgers that we needed for the preparation of the defendant's income tax returns and corporation return. They have been prepared and they have been filed, so I would say that motion is rather moot.

Mr. Jones: But he has to rule on it. He has either got to sustain the motion and you've got to admit that you've got the records, unless you want to withdraw the motion.

Mr. Avedisian: I don't want to withdraw it. Go ahead and overrule it.

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Mr. Jones: Have you prepared the income tax returns?

Mr. Avedisian: I don't know whether that document is limited to the income tax returns.

Mr. Jones: Which document?

Mr. Avedisian: Let's see, I got part of the information and I don't know whether we got it all.

Mr. Jones: Which document didn't you get?

The Court: I believe he said the April checkbook. Is that right? Is that the check stubs or what?

Mr. Knapp: The bank statement, I haven't found it yet.

Mr. Jones: April of what year?

Mr. Knapp: 1976.

Mr. Jones: When would it have been mailed to you?

Mr. Knapp: April 1st.

Mr. Jones: Is that—

The Court: It wouldn't be your April bank statement then, mailed on April 1st. They usually come out at the end of the month.

Mr. Knapp: March bank statement.

Mr. Jones: On whose account? Yours?

Mr. Knapp: IET.

Mr. Jones: If I've got it. Do you need that for the trial?

The Court: No, he needs it to complete his tax records.

Mr. Jones: I thought they had already done that.

Mr. Avedisian: We did it for last year.

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Mr. Jones: That's not needed for this trial?

The Court: If they need to look at it, if you're holding records they need in another aspect of business, they ought to be entitled to them.

Mr. Jones: If I've got it they can see it, but those records are at the bank.

Mr. Avedisian: If you're not going to use them in the trial, I don't know why you're holding them.

Mr. Jones: I don't know what I've got.

Mr. Knapp: We didn't discover that one. It's the only one missing so far.

Mr. Jones: Incidentally, could I have the journals for the last quarter of 1975? The posting for the check registers and check receipts? And the first part of '76?

Mr. Avedisian: We photocopied those, you know.

Mr. Jones: I don't have those. You all had to prepare them yourselves. There was a quarter that they didn't seize.

Mr. Knapp: It was 1972, wasn't it?

Mr. Avedisian: The only ones we photocopied was April 1, 1975 through March 31, 1976 so that we could file the corporation income tax returns.

Mr. Jones: Where are the originals?

Mr. Avedisian: The originals should be in your office.

Mr. Jones: They weren't posted. She hasn't posted them yet.

Mr. Knapp: There were no originals. We just copied it on a

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piece of paper.

Mr. Jones: Didn't you photocopy the whole general ledger?

Mr. Knapp: It wasn't posted past July.

Mr. Avedisian: The girl posted them at the school after they were photocopied.

Mr. Jones: Are they down there at the school?

Mr. Avedisian: They are in my office.

Mr. Jones: I would like to have those.

Mr. Avedisian: You can't have those. The IRS wants a photocopy of that. I can't give those up. I will let you photocopy them.

Mr. Jones: Let me look at them.

Mr. Avedisian: All right.

The Court: All right, I'm going to sustain that motion to the extent of the March bank statement.

Mr. Jones: If I've got it.

The Court: All right, if you have it. The rest of it is not necessary for the Court to rule on it because it has been furnished. Now, I have one here, renewal of motion for names of witnesses and/or motion to dismiss indictment dated December 8. This is more or less a renewal of motion we talked about previously about the endorsement on the indictment of the witnesses who were examined and then there is the further request again about the names of all witnesses who are * * *

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The Court: That's a matter of defense. If you can prove that—just like a check—if you can prove that the bank didn't have to give the money, but they just did out of the goodness of their heart or something, then there is no case.

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The Court: In order that the record be straight so that a proper objection can be made, the motion to consolidate a motion for suppression of evidence and/or dismissal of indictment dated 1-26-77, the consolidated motion for suppression of evidence and/or dismissal of indictment dated December 8, 1976, the supplemental motion for suppression of evidence and dismissal of indictment dated September 21, 1976, the supplemental motion for suppression of evidence and for dismissal of indictment dated September 17, 1976, and the motion for suppression of evidence and dismissal of indictment dated September 2, 1976, are all overruled for the reasons stated and show Mr. Avedisian's objection to that ruling.

Mr. Avedisian: Your Honor, I want to state at this point that likewise the motion was based upon motion for dismissal and suppression was based upon direct violation of the defendant's rights under the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

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EXHIBIT No. 24

TRANSCRIPT OF HEARING
(April 26, 1977)

The transcript of the hearing held on April 26, 1977, at approximately 11:00 a.m. in the McCracken Circuit Courtroom, Courthouse, Paducah, Kentucky, with the Honorable J. Brandon Price, Judge of McCracken Circuit Court, Division No. II, presiding.

The Plaintiff was represented by counsel, Hon. Albert Jones, Commonwealth Attorney.

The Defendant was represented by counsel, Hon. Michael Avedisian.

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EXHIBIT No. 25

TRANSCRIPT OF HEARING
(April 28, 1977)

The transcript of the hearing held on April 28, 1977, at approximately 2:45 p.m. in the McCracken Circuit Courtroom, Courthouse, Paducah, Kentucky, with the Honorable J. Brandon Price, Judge of McCracken Circuit Court, Division No. II, presiding.

The Plaintiff was represented by counsel, Hon. Albert Jones, Commonwealth Attorney.

The Defendant was present in person and represented by counsel, Hon. Michael Avedisian and Hon. Andrew Avedisian.

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Mr. Avedisian: * * * * * * that we are taking; and in connection with that, we have filed a Waiver of a Speedy Trial Act guaranteed by Section 14 of the Constitution of the Commonwealth of Kentucky and Criminal Rule 9.02 of the Kentucky Rules of Criminal Procedure. We've waived that right. Now, the basis for our Motion to Continue consists of various things. In the first place, we have several motions that are pending before this Court, part of which have been ruled upon by the Judge of Division I and the remainder left open for a later ruling. Now, some of those motions that are pending before this Court are the Motion to Dismiss that was filed February 8, 1977, in which Motion we stated as our grounds that possession of these alleged instruments were not in fact in the possession of the Defendant but that they were in the possession of the Corporation for whom he worked. Now, that's a question of law that has to be decided before we can go to trial on this case. Another Motion that we have on file that has not been ruled upon, or it was ruled upon rather on February 10, 1977, by Division I was on our Motion to Produce and Disclose, which was filed on February 7, 1977. Judge Emery of Division I ruled on all numerical paragraphs in that Motion except numerical paragraph three, which dealt with verifications or acknowledgements from the students as to the authenticity or genuineness of their signatures. Now, on February 10, 1977, the Judge of Division I ordered that they be produced. We have not received those verifications to date, so we filed

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another Motion to Produce and Disclose those documents on April 22, 1977, asking the Commonwealth Attorney to obey the Order of the Court of February 10, 1977. This is

April 28, 1977, and we have not received nor heard from the Commonwealth Attorney's office.

The Court: I believe, Mr. Avedisian, that was filed on April 25 instead of April 22.

Mr. Avedisian: The Motion is dated April 22. Now, when the Clerk filed it, it . . .

The Court: The Clerk filed it the day it was brought in. I don't know what day you brought it in. You must not . . .

Mr. Avedisian: Well, we mailed it on the 22nd. Now, if they received it on the 25th, then it's filed as of the 25th.

The Court: Filed as of the 25th.

Mr. Avedisian: We mailed it on the 22nd.

The Court: Well, we're not . . .

Mr. Jones: I don't think that's the date that you consider it filed, the date you mail it. It's the date it's received.

Mr. Avedisian: I'm not making an issue of it. If that's the date, that is. I'm not taking issue about the filing date. I'm saying we mailed it on the 22nd.

The Court: Well, all I wanted to do is not take an issue with it, I just wanted the date to, your date to reflect the same date that the record reflects, not filed twice.

Mr. Avedisian: Alright, let's correct my date to April 25.

The Court: That's right.

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Mr. Avedisian: Now, Your Honor, we have a Motion for Suppression of Evidence, which Division I has not ruled upon as to the evidence which we have claimed to be unlawfully seized in violation of Defendant's rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments of the Constitution of the United States and Section 10 of the Constitution of the Commonwealth of Kentucky. Further, Di-

vision I as to the admissibility of evidence stated in a hearing held on February 3, 1977, of record in Transcript of Proceeding, Volume 2, Page 183 as follows: "The Court: They are entitled to them because they presumably could be usable in the defense for cross-examining witnesses; and I think they are entitled to them. I think failure to give them to them would be a reversible error." Now, the Judge in Division I was referring to the verification statements executed by the students as to the genuineness of their signatures on their retail installment contracts and tuition agreements which are the subject matter of the indictment returned herein. Now, further, in the Motion to Produce, which the Commonwealth as yet has not complied with, there are 25 of the 41 verifications executed by the students as to the genuineness of their signatures not furnished to the Defendant by the prosecution, and they are part of the indictment that have been returned against the Defendant on April 16, 1976, and those 25 are Ricky Lawson . . .

The Court: Well, you needn't read them out. Mr. Jones, have you furnished the Defendant and his attorney, Mr.

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Avedisian, all of everything you have, copies of?

Mr. Jones: I furnished them, the things that they're talking about, I don't have. If there is such a thing in existence, I am informed by the victim company what they're talking about is not in existence and never has been; so I don't have them.

The Court: That was the impression I got from conversing with Judge Emery about it; so I don't see much point in going into that further then.

Mr. Avedisian: I think that's very important, and I intend to go into that very thoroughly, and I'm not going

to skim over that point. Now, either we get those things or else I want to file another motion to dismiss this case. We're entitled to these documents. They're part of the indictment, and I don't intend to skim over this point. I want it very clearly understood.

The Court: Mr. Jones has told you emphatically that he does not have them.

Mr. Avedisian: We have proof that that evidence was in his possession at the time that he made a search and seizure of all the Defendant's evidence; it was in his file. Now, where they disappeared to, we don't know.

The Court: When did you raise this question with Judge Emery please?

Mr. Avedisian: We raised this . . .

The Court: In February?

Mr. Avedisian: We raised this question for a Motion to Produce and Disclose this evidence on, it was filed on February

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7, 1977.

The Court: February?

Mr. Avedisian: And an order was entered for the Commonwealth to produce that on February 10, 1977, specifically numerical paragraph 3 in the Judge's Order. Now, I don't intend to skim over this point; because this is a vital point for the defense; and I intend to hang in there and hang in there hard. Now, I'd like to get the names of these individuals in the record of this case.

The Court: Alright, go ahead.

Mr. Avedisian: And then we don't need—if it's a matter of time, I'm sorry, Your Honor, but they've got to get into the record. Number one is . . .

The Court: Mr. Avedisian, I might say this. You've had from the time that Order was entered up until April

25 to proceed with any Motions that you had to get a ruling on before Judge Emery.

Mr. Avedisian: I have filed—I got an Order from Judge Emery, for him to produce it. He hasn't complied with it. Now, I've filed a Motion for you to rule on it.

The Court: And you've waited right up until Arraignment Day, the date when the trial is suppose to be set for trial, haven't you?

Mr. Avedisian: I don't think that's imperative at this point. The trial hasn't been set, and I want this information, otherwise I'm renewing my Motion to Dismiss.

The Court: Alright, make your renewal of the Motion.

Mr. Avedisian: I'm making another Motion to dismiss this case if

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we don't get that evidence at least two weeks before the trial date.

The Court: I'll overrule your Motion.

Mr. Avedisian: Thank you, Your Honor, we take objections to that ruling.

The Court: Alright, now, what's your next one?

Mr. Avedisian: Well, my—the list that we want is number one, Ricky Lawson; number two is Allen Duhs; number three is Dawson Nuszbaum; number four is Lee Blan; number five is Dave Morrow; number six is Roger Dale Johnson; number seven is Lynn Cothron; number eight is James Neil; number nine is Ray Allen; number ten is William Allen; number eleven is James Ray; number twelve is Bill Johnson; number thirteen is Perry Brown; number fourteen is Arlington Terry; number fifteen is Ron Meadors; sixteen is Lynn Wyman; 17 is Eric Mars; 18 is Dean Metcalf; 19 is Anthony Guthrie; 20 is Bob McGuire; 21 is Wilson Hobbs; 22 is Ralph Steele; 23 is Dale Jones; 24 is Dale Rogers; and 25 is Mike Griffith.

The Court: Alright, Mr. Jones, do you have any information that he's asking for that you have not produced at all?

Mr. Jones: He's got everything that I have concerning what he's talking about.

The Court: Now, after the matter was up before Judge Emery in February, how soon after that if at all did you make any response to Mr. Avedisian orally or in writing?

Mr. Jones: Mr. Knapp came up there, and he and I went through it; and it was not there. I don't know what day it was he came up there. What they're talking about are not

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in existence I have been informed by the victim company.

Mr. Avedisian: Well, Your Honor . . .

Mr. Jones: Let me finish.

Mr. Avedisian: Oh, I'm sorry.

Mr. Jones: He used to interrupting me, but what they're talking about, it's my understanding, is things that are not in existence and never have been.

The Court: And you don't have the power to produce it?

Mr. Jones: If it's not in existence, how can you produce it?

The Court: Have you ever had it in your custody?

Mr. Jones: Not to my knowledge.

Mr. Avedisian: Your Honor, I would like to move the Court at this time that if the prosecution places into evidence these documents that we are requesting to be produced and disclosed, which have been ordered to be produced and disclosed that they be suppressed from admission into evidence or dismissal of the action, one or the other.

The Court: Well, we'll take that matter if they should attempt to be offered at that time. Yes, we'll take that up.

Mr. Avedisian: We just want to get it into the record now, Your Honor.

The Court: Alright. That's alright to get it into the record. Any further matter on the Motion to Produce is overruled. Alright, now, what's next?

Mr. Avedisian: We take exception to your ruling, Your Honor.

The Court: Alright.

EXHIBIT No. 26

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TRANSCRIPT OF HEARING
(May 3, 1977)

The transcript of the hearing held on May 3, 1977, at approximately 2:00 p.m. in the McCracken Circuit Courtroom, Courthouse, Paducah, Kentucky, with the Honorable J. Brandon Price, Judge of McCracken Circuit Court, Division No. II, presiding.

The Plaintiff was represented by counsel, Hon. Albert Jones, Commonwealth's Attorney.

The Defendant was present in person and represented by counsel, Hon. Michael Avedisian and Hon. Andrew Avedisian.

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EXHIBIT No. 27

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TRANSCRIPT OF HEARING
(August 30, 1977)

A hearing in the above-styled action on Motion, Subpoenas for Defendant's Out-of-State Witnesses, was held on August 30, 1977, at the hour of 2:00 P.M. o'clock, before The Honorable Lloyd C. Emery, II, Judge, McCracken Circuit Court, Division I, in Chambers, at the McCracken County Courthouse, Paducah, Kentucky.

The Plaintiff was represented by The Honorable Mark P. Bryant, Assistant Special Attorney General.

The Defendant was represented by The Honorable Michael Avedisian and The Honorable Andrew H. Avedisian.

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Court: This is a hearing, August 30, 1977, respecting Commonwealth v. Jerry Knapp, present Andrew and Michael Avedisian for the defendant, the special prosecutor for the Attorney General's office, Mark Bryant, respecting a motion of the defendant pursuant to KRS 421.-250 for the Court to issue certificates to summon certain out-of-state witnesses, the hearing being held for the purpose of determining whether such witnesses are material to the defendant's defense and to ascertain for the Court these facts and to specify the number of days the witness will be required in said case.

Okay, Andy and Mike you-all are the movants.

Mr. Mike Avedisian: Well, your Honor, the first point I would like to make to the Court is the fact that the defendant has been charged under 516.060 for uttering a forged instrument, that's "A"; "B" with knowledge that

the instrument was forged; and "C" with the intent to injure a third party for another. As the Court well knows, the burden of proof on proving these elements in a crime is on the Commonwealth. However, we do have the responsibility for the defense and, as we see it, the reason why we need the witnesses that are tendered to the motion are as follows: in the case of *VanWinkle* v. *Commonwealth*, 7 S. W. 2d 845, decided June 12, 1968 by the Kentucky Court of Appeals—

Court: What was that first number?

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Mr. Mike Avedisian: Seven—7 S. W. 2d.

Court: Okay. And the date?

Mr. Mike Avedisian: June 12, 1968.

Court: A Kentucky case, in 7 S. W. 2d?

Mr. Mike Avedisian: Right.

Mr. Bryant: That would be 1940 something, wouldn't it?

Court: No, that would go back to about 1925.

Mr. Mike Avedisian: I could have made a mistake in the year, your Honor.

Court: I think you did because 1968 would be somewhere up around the 400s—460 or something.

Mr. Mike Avedisian: Probably. It could be 1928. We will check the year.

(Discussion regarding the year)

Let's state, your Honor, that the date is probably erroneous but the case is correct, *VanWinkle* v. *Commonwealth* 7 S. W. 2d 845.

Court: Okay, what does it say?

Mr. Mike Avedisian: The Court of Appeals held, "Forgery cannot be established by merely showing that defendant once had possession of a forged instrument with-

out identifying the persons through whose hands it passed before reaching the injured person."

Court: Okay.

Mr. Mike Avedisian: Now, a second case is *Montgomery* v. *Common-*

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wealth 224 S. W. 878. That case held—that case held, "Knowledge of the forgery remains an essential element of an uttering conviction." Now, inasmuch as the—in view of the foregoing, it is essential to the defense, and we intend to prove, that one or more of the witnesses that we have listed in our motion, that are out-of-state, who at one time worked for Associates, who claims to be the injured party in this case, either signed the contracts in question or were the perpetrator of the crime. Now, as to the identification of persons through whose hands that those documents passed, the contracts in question, there were several persons that those documents passed through to the witnesses hands and those witnesses are also listed in those list of witnesses appended to our motion and, therefore, it is the position of the defense, that the witnesses that are appended—the out-of-state witnesses whose names are appended to that motion are necessary and material to the defense of this case.

Court: In other words, what you are saying is that somebody else might have forged them besides Jerry Knapp?

Mr. Bryant: Your Honor—

Mr. Mike Avedisian: Wait a minute—wait a minute, I am not through.

Court: All right. Go ahead.

Mr. Mike Avedisian: Your Honor, may I elaborate on that?

Court: Go ahead.

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Mr. Mike Avedisian: Somebody else may have forged those instruments besides the defendant without his knowledge and the only way that we can prove that is not by the defendant's testimony but by the testimony of these witnesses.

Now, secondly, the statute—

Court: Well, firstly, lets take that up. Let's talk about that one a minute. Now, what statute is he indicted under?

Mr. Mike Avedisian: 516.060.

Court: (Judge looks up the statute.)

Mr. Mike Avedisian: Shall I go ahead and finish my argument, Judge?

Court: Well, let's take that one up first.

Mr. Mike Avedisian: In other words, your Honor, under that charge, under 516.060, the Commonwealth has to prove, number one, the uttering of a forged instrument.

Court: Mmmm, number one is possession.

Mr. Mike Avedisian: Well, possession and uttering—and/or uttering.

Court: With knowledge that it was forged.

Mr. Mike Avedisian: With knowledge, number two, and three with intent to injure another party.

Court: Well, defraud, deceive or injure.

Mr. Mike Avedisian: Whatever.

Court: And he can utter it or he can possess it.

Mr. Mike Avedisian: That's right, either one.

Court: All right.

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Mr. Mike Avedisian: And I believe my position was along those lines initially. However, the point that we are trying to make, your Honor, is the fact that—

Court: And you think these witnesses can prove that it wasn't forged or that, if it was, it was without knowledge and it was without intent?

Mr. Andy Avedisian: Right.

Court: And he didn't utter it or he didn't possess it?

Mr. Mike Avedisian: That's correct, your Honor.

Court: Okay.

Mr. Mike Avedisian: And that the instruments in question passed through several other hands, who happen to be the witnesses on that list that we need to get in here. Without them we would have no defense.

Court: In other words, you are claiming they are important to show that he had no knowledge and no intent.

Mr. Mike Avedisian: That is correct. If we don't get those witnesses in, we will have no defense.

Court: Now, is that what all of these witnesses are going to testify to?

Mr. Mike Avedisian: Well, all of the out-of-town witnesses that had been associated with Associates, Discount Services, Discount Companies—

Court: Which ones are they? Now, you have got them listed—

Mr. Mike Avedisian: We've got them listed. All right, let's see—

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Court: All right, which ones are they?

Mr. Mike Avedisian: Okay. George Schmidt, the accountant for Associates. He has to be here, your Honor, because—

Court: All right, that's number three.

Mr. Mike Avedisian: I'll tell you why, because I believe in the record of this case, in previous hearings, we established the fact and introduced into evidence his memorandum to his higher headquarters stating that Associates owed the defendant $183,900 which the defendant doesn't need to know about, and he signed his name to it.

Court: All right, that's number three, what else?

Mr. Mike Avedisian: We need him. We need the Zone Supervisor.

Court: Number four.

Mr. Mike Avedisian: Right, sir. That's Cal Hartwell.

Court: That's number four on the list here. All right, what else?

Mr. Mike Avedisian: We need Spencer Gibbs, number five, Elmhurst, Illinois, Zone Senior Vice President.

Court: Who else?

Mr. Mike Avedisian: Dale Watson.

Court: Now, what you are saying is that these people support your contention that he had no knowledge, and no intent, and that he didn't utter or possess those instruments?

Mr. Mike Avedisian: Well, your Honor, we are not saying that all of them are going to support that theory but that if the

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ones that do not support it may be the—

Court: Now, you are going to call them as your witnesses, you know?

Mr. Mike Avedisian: That's right.

Court: All right, you are going to be bound by the testimony?

Mr. Mike Avedisian: Right.

Court: Go ahead.

Mr. Andy Avedisian: We feel that we want them, Judge.

Court: All right. That's three, four, five and six Dale Watson.

Mr. Mike Avedisian: Dean Neller, Regional Vice President of Associates.

Court: All right. That's seven. Who else?

Mr. Mike Avedisian: Kenneth Strole, he was the man-

ager over the Kentucky operation here and very active in the Association.

Court: All right, that's number eight on the list. Who else?

Mr. Mike Avedisian: Vaughn Albert.

Court: All right.

Mr. Mike Avedisian: J. T. Adkins, Dallas, Texas.

Court: All right.

Mr. Mike Avedisian: Robert Grant, Dallas, Texas.

Court: All right. Who else?

Mr. Mike Avedisian: Joel Dolkart, number fifteen.

Court: Okay. What's his position?

Mr. Mike Avedisian: Gulf & Western—Joel Dolkart?

Court: Uh-huh.

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Mr. Mike Avedisian: He, uh, we are going to use him in connection with proving that the victim, alleged victim in this case, in fact was not an injured party. Now, that's an issue we are going to argue tomorrow afternoon, your Honor, before the Court because under the statute there has to be a victim and this witness, along with others, are going to prove—

Court: You mean, what you are going to do is say that nobody was injured?

Mr. Mike Avedisian: That's correct.

Court: Okay. Nobody was deceived?

Mr. Mike Avedisian: That's correct.

Court: What is he and what is his position? Who is he?

Mr. Mike Avedisian: He is one of the officials of Associates and I don't know exactly at this time what his official title is. We don't have it in this list.

Court: Okay. So, so far you have talked about three, four, five, six, seven, eight, nine, ten, eleven and fifteen?

Mr. Mike Avedisian: Right.

Court: Okay. Who else?

Mr. Mike Avedisian: Sidney Korshak.

Court: Who is he? That's number sixteen?

Mr. Mike Avedisian: Right. He is either the present attorney or former attorney for either Gulf & Western or Associates and defendant, as I understand it, has had some conversation * * *

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EXHIBIT No. 28

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TRANSCRIPT OF HEARING
(August 31, 1977)

A hearing was held on August 31, 1977, at the hour of 1:30 P.M. cdt. in the Circuit Court Room of the McCracken County Courthouse, Paducah, Kentucky, before the Honorable Lloyd C. Emery II, on motions and objections filed by the Dedendant and the Commonwealth. The Comonwealth was represented by Hon. Mark Bryant, Special Assistant, Attorney General's office. The Defendant was present in open Court and was represented by his attorneys, Hon. Michael Avedisian and Hon. Andrew Avedisian.

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The Court: All right, now, Mark, you have just the one thing pending?

Mr. Bryant: Yes, sir.

The Court: And that was the discovery relating to the defendant under RCR 7.24, right?

Mr. Bryant: Yes, sir.

The Court: Mike, you have the motion to suppress, August 22, 1977; motion to suppress, supplemental, August 26, 1977; the objection to the trial date of August 26, 1977; Petition and notice for change of venue, August 22, 1977; supplemental motion to dismiss of June 20, 1977 that is Second supplemental motion; petition to secure attendance of out of State witnesses that was discussed yesterday. Right?

Mr. M. Avedisian: Yes, Your Honor.

The Court: First, let's take up the question of the change of venue based on the allegations in your petition of August 22, 1977, that the Defendant would not receive a fair trial in this County and this Court. Since you are the movant, I would like for you to put on whatever evidence you have or make whatever statements you wish to make.

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Mr. M. Avedisian: Your Honor, the only statement that I can make—and I would like to put on the defendant to elicit his testimony—is the fact that the newspaper articles in the Paducah Sun-Democrat that have appeared for the last—well, since the Defendant was indicted, have misleading, false and untrue statements which have prejudiced the minds of the citizens of this area, namely western Kentucky, southern Illinois, southeastern Missouri, northern Tennessee, to the point that the defendant has been tried actually in the newspapers instead of a Court of Law, and to obtain a fair and impartial trial, finding a Jury in this county to render a fair and impartial trial for this defendant is impossible. In view of that, I would like to put the defendant on the stand.

Mr. Bryant: I would like to get him on the stand, Your Honor.

The Court: Mr. Bryant, just be patient a few moments, please. First in your motion which is in the original file

here, you have quite a few exhibits. They are from various and sundry stories out of the newspapers or wherever they came from. Some of them are dated, but most of them are not.

Mr. M. Avedisian: Well, Your Honor, the defendant can tell you the dates of each article, along with the reasons for his objections.

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Mr. Bryant: If you put him on, that's not what I'm going to talk about.

The Court: Let's just go ahead.

Mr. M. Avedisian: As the defense sees it, the elements of the crime charged against the Defendant under KRS 516.060 are, One: With knowledge that an instrument was forged, and Two: with intent to defraud, deceive or injure another, Three: utter or possess, Four: a forged instrument of a kind specified in KRS 516.030, and Five: venue. Now, with this in mind, we have a motion to suppress and/or dismiss which we filed August 22, 1977. We has a supplemental motion filed to suppress and/or dismiss filed on August 26, 1977, to which motions the Commonwealth has responded by a pleading filed August 29, 1977.

Mr. Bryant: Have we gotten that question out of the way yet, Your Honor, on this petition, have we finished that? The petition for out of State witnesses.

The Court: I haven't ruled on it. I haven't heard you answer the question that I've asked you.

Mr. M. Avedisian: Do you have any objections to him granting those out of state witnesses?

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The Defendant filed a motion to suppress and/or a motion to dismiss on August 22, 1977. The Defendant also

filed a supplemental motion to suppress and/or to dismiss on August 26, 1977, to which the prosecution has responded by a pleading filed August 29, 1977. In the response filed by the prosecution in paragraph, the prosecution states, "In connection with the Family Education Right to Privacy Act of 1974, and Title Twenty, Section 1232-G, that this law merely places ecomonic sanctions on an educational institution which allows other persons access to educational records of students." Now, the prosecution had addresed itself only to the school, IET. The Prosecution did not address himself to Associates. In one of our motions, we address ourselves to Associates, and in the other, we address ourselves to the school. Now, the prosecution is simply saying there that the law places a mere penalty on the institution for not doing certain things. We are not talking about the penalty or the economic sanction. We are talking about the voluntary disclosures that were made by Associates to a third party, and re-disclosures, which I will get into.

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The Court: Well, let me save you some time. I have read that statute and also the one that has to do with regulation Z. The preamble to those very clearly sets it out: The complaining party—there are two parties. One is the federal government—if things pertinent to the students' records are released without his consent or his parents, as the case may be, they may lose their federal funding as a result, or that may result if that is done. Otherwise, it is for the protection of the student, and for no other parties is it the protection of. I think the only one who could invoke that act would be the students involved. I don't think it has anything to do with the admissibility of any evidence that I know about. I am sure that you don't agree, but I think you ought to apply your objections to my ruling

on that. But that is my ruling and that is the reason for it is because that is for the protection of the students and the records of the students primarily, and it has nothing to do with the admissibility of that evidence in a criminal proceeding in a Kentucky Court, no way. There is no reference to that type of thing anywhere in there, and I went into it carefully to determine if it did, and it didn't.

Mr. M. Avedisian: Well, Your Honor, I want to take an

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exception to your ruling, if it is your ruling.

The Court: Well, that's right because you had an expression on August 22 that brings that up, and one supplemental on August 26, 1977, that brings that up and I think one of those, and I believe it is the latter that throws in Regulation Z requirements. Of course, that relates strictly to the student, again, and his awareness of what the financial charges are and so on. That is something that has no relationship to this case whatsoever. That is something for the protection of the consumer. The consumer happens to be the student, and he is the one who is theoretically going to be paying it, he is supposed to be the one who is entitled to put the financial office on notice. If he hasn't had those rights given to him, then he may have some objections, or maybe not. But that is not pertinent to this case at all. Now, on the other one, the Privacy Act, that 1232-G that you mentioned, and some other sections also that are along with that, although that is the one that relates to the privacy of records, I think the only ones who would have a right to object there would be the students, or the federal government, if a student complains. That is what the ruling is, and you all may not agree with that, but that is

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the way it is and you all don't have to take an exception. All you have to do is show that you object to the ruling, and it is in the record. So, you are okay.

Mr. M. Avidesian: Your Honor, I take exception to that ruling, too, and I would like to place into the record our argument. That is, with regard to Title Twenty, Section 1232-G, 45C99.18Sec, before Associates redisclosed the contract, they should have given the custodian of the records, which happened to be Mr. Knapp, an opportunity to inspect and to review the record of the student. By not allowing him to do so, it violated his rights as custodian of the records. Now, that particular section states, the regulation states, 99.33, "Limitation on redisclosure: (A) An educational institution or agency may disclose personally identifiable information from the educational records only on the condition that the parties to whom the information is disclosed will not disclose the information to any other parties without the prior written consent of a parent of the student, or the eligible student, except the personally identifiable information which is disclosed to an institution, agency or organization and may be used by its officers, employees and agents, but only for the purposes for

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which the disclosure was made. It goes on to say, under paragraph B, "provided that the record keeping requirements of 99.32 are met with respect to each of those parties." 99.32 states, "(A), an educational agency or institution shall for each request for and each disclosure of personally identifiable information from the educational records of a student maintain a record kept with the educational records of the student which indicates (C) the record of disclosures may be inspected: One, by the parent of the student or the eligible student; two, by the school officials, and his or her

assistants who are responsible for the custody of the records." Now, after reading the law here, Your Honor, the only conclusion that I can come to is that, if the opportunity was given to the custodian of the record, Mr. Knapp, he would have questioned the signatures and any other discrepancies in the contracts and notified the student and/or his parent and with their consent, would have notified the proper authorities. Now, Mr. Knapp was custodian of the records and by not being able to do so, his rights were violated under the Constitution of the United States and of the Commonwealth of Kentucky. Now Mr. Knapp has been personally indicted and not the corporation of any other entity.

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As custodian of the records, his individual rights were violated under Title Twenty, which, in turn, violated his constitutional rights under the constitution, whereupon a hearing would have been conducted in accordance with 20 USC 1232-G §A§(2), if he was notified, which he was not. Now, I read you 99.33 and 99.32.

The Court: Yes, sir, I have read all of that, Mr. Avedisian, I don't think you have to read the statute directly. It speaks for itself. The Court has read it, as I told you.

Mr. M. Avedisian: Well, then the only conclusion that I can come to after reading that, is what I have argued here. To bear out in very succinct language here, the way we see it, Your Honor, is that is "A" pleads as a defense Title Twenty USC Section 1232-B, upon grounds that "D", the Commonwealth's attorney, obtained inadmissible evidence from "C", which is Associates, in violation of this statute, he therefore cannot introduce these things towards the indictment. The purpose of this law is that if "C", Associates, had a student's name at the bottom of the con-

tract, after "C", Associates, had possession, then "C" must have notified and obtained the consent of the parent, student or the school official, "A", which is Knapp,

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the custodian of the records, to give them the opportunity to inspect and correct the discrepancies before "C", Associates, turned over and redisclosed the records to "D". Now, that is the way we interpret it, that law. They did not do this, Your Honor. Therefore, we contend that any redisclosures that they made without following that staute, are inadmissible in this case as evidence. That is the substance and all for 1232-G.

Point number three, Your Honor, is this: Legal efficacy —We have two cases. One is the Davis case 399 S. W. 2 711, and the Brewer case, 67 S. W. 994. The Davis case holds, "The writing must be of apparent legal efficacy or foundation of legal liability to be a subject of forgery" The Brewer case holds, "One who adds to a purported copy made by him, signatures which were not appended to the original is not guilty of forgery." In our case here—

The Court: Well, before we can take that up as a legal proposition, we have to have an admission out of your client that he did add something to them, and I don't think that is what you want to do. I think that is something that you had better take up later frankly.

Mr. M. Avedisian: In our case, Your Honor, in the contracts

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in question, which are the subject matter of the indictment, the following is listed: (1) The signatures were missing of the students at the bottom of the contract at the time Mr. Knapp approved the sale of same to Assoicates. (2) There were no finance or interest charges reflected on the contract anywhere. (3) In accordance with KRS 355.3-406,

Sections 226.4 §(a)§6, and under regulation Z, if Associates deducted the insurance premium included in the finance charge from the loan to the school, this is a violation of section 106, Regulation Z. The penalty for this violation under Regulation Z, the finance company, Associates, were to owe the school double the finance charge, with a minimum of $100 and a maximum of $1,000 in addition to attorney fees for each violation. (4) Due to the fact that Associates violated the contractural obligations as to the rate of interest as specified in KRS 287.215, which pertains to the authority to charge interest in advance on installment loans, and further, such statute, §7 states, "the lending institution shall deliver a receipt for each payment on a student's loan." Associates also violated §7 of that statute. Due to the fact that Associates violated KRS 287.215, which pertains more specifically to sections 1 through 7, then §10, sets out and

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states, "Any contract of loan in the making or collection of which any acts have been done which constitute the willful violation of any provision of this section shall be void, and the bank, trust company, combined bank or trust company, shall have no right to collect or receive any interest or charges whatsoever on such loan, but the unpaid principle of the loan shall be paid in full to the lending institution." Our argument, Your Honor, is under KRS 287.215, §10, if Associates violated any of the provisions in that statute, then the contract by and between the school, IET, and Associates are void and not voidable. Therefore, there is no contract in being and no legal efficacy by and between the parties, and there is no way Associates can be a victim to any transactions between the parties.

If Associates over charged an interest rate in violation of this statute, and also did not deliver a receipt for each

payment on the loan to the Knapp, the defendant, then it is our contention that the contract by and between the school and Associates are again void under §10 of that statute. Therefore, if there is a void contract between Associates and Knapp, how can the Commonwealth Attorney prove that Knapp uttered a forged instrument that is a void

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instrument.

The next point, Your Honor, under KRS 355.3-115, concerning incomplete instruments." When a paper whose contents at the time of signing show that it is intended to become an instrument signed while still incomplete in any necessary respect, it cannot be enforced until it is completed." It is our position that the forty-one contracts between Associates and IET were never complete because the contracts had from eight to ten spaces filled in, but they had twenty-five to twenty-eight spaces left blank, and the contract itself does not have a name on the line for the applicant's signature at the time of the purchasing sale.

The next section that we want to bring to the Court's attention is KRS 355.3-406, which states, "Any person who by his negligence substantially contributes to material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority as holder in due course, or against a drawee or other payor, who pays the instrument in good faith and in accordance with reasonable commercial standards of the drawee or payor's business." Going on with the point on legal efficacy, the Commonwealth

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vs. Cothran, 157 S. W. 2 521 held, "An indictment under this section, which sets forth merely an instrument which, if true, would be of no legal efficacy, is insufficient." Where

the annual interest rate exceeds the 6% simple interest to loans, educational loans, made to minors and the validity of that contract is determined by KRS 287.385, that statute states, "any promissory note, contract or other instrument entered into by any such person which assumes the provisions of this section shall have the approval of the parent or guardian of such minor, and the financial officer of the institution of higher learning." There was no such approval obtained on any of said contracts. One further thought, Your Honor, with respect to legal efficacy, the KRS 360.260 state that the State law shall require disclosure of items of information substantially similar to the requirements of any applicable federal law.

Now, going on to point five: Point five of my presentation to the Court, Your Honor, is the matter of the victim. With respect to the victim, in prosecution's response to defendant's motion to suppress and/or dismissed filed on August 22, 1977, and August 26, 1977, the prosecution states in paragraph four of its response filed to those pleadings on August 29, 1977, that "With respect to ground

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four of defendant's motion to suppress, plaintiff denies that the hold-backs, interest and financial charges were improperly and illegally made by Associates Financial Services, with respect to the contract in question, since they were made in conformity with the dealer-arrangement entered into on July, 1972 between the Institute of Electronic Technology and Associates Financial Services, Inc., said agreement having been signed by the Defendant, as well as his partner, Richard May, Marilyn May, and A. L. Scoop, as agents for Associates Financial Services, Inc. Hence, because of the large amount of money fraudulently procured by the defendant, there is a victim in this case,"

I want that emphasized. "Not withstanding, however, the defendant's allegations to the contrary." So, in the first place the prosecution admits that there is a victim, and their victim obviously is Associates. Getting back to the comments made by the prosecution in that paragraph, in the first place, when he mentioned a dealer-arrangement or dealer-agreement, there is absolutely no mention made of financial interest charges in dealer agreement between the two parties. He must be referring to the security agreement which has absolutely nothing to do with our case. The

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dealer agreement has only one signature and that is of the defendant. We have a copy of it right here if the Court wants to see. I want to get back to the victim. Number one under victim: Improper holdbacks interst and finance charges in excess of legal limits made by Associates with regard to the contracts in question cannot result in Associates being the victim in this case. Second, we have an exhibit in the record of this case introduced on behalf of the defendant which establishes that George Schmidt, the accountant for Associates, in his handwriting and under his initials, has stated that the amount payable to them is $183,890 after taking into consideration every hold back or interest charge downward from the $1,084,671.

Mr. Bryant: If the Court please, I want to object to that.

Mr. M. Avedisian: I don't want any interruptions. I want to continue on with my arguments.

Mr. Bryant: That is not what the note says. It doesn't have anything to do with that.

Mr. M. Avedisian: He goes ahead to state under that that he doesn't know about this though. In other words, the accountant is stating to Bob, who is his superior at

Associates on a memo dated February 18, 1976, that Associates owes the defendant $183,890, but that * * *

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Mr. M. Avedisian: May I proceed, Your Honor?

The Court: All right, go ahead, I will say this, and Mr. Bryant, you can make a note there and then respond to it. Let him go ahead and complete what he has to say and then whatever you have to say then, we will take that up. You will be entitled to the same treatment, that is, no interruptions unless the Court has something that it wants to ask. Go ahead, Mr. Avedisian.

Mr. M. Avedisian: Thank you, Your Honor. As to the victim; KRS 287.215, which I stated into the record heretofore, applies again, and KRS 287.385 again applies under the issue of victim, where educational loans are made to minors, and their validity, where the interest exceeds 6% simple interest. Now, I want to read KRS 360.060 which applies to the interest on hold-backs, which they have also violated. 360.060 states, "Interest on hold-backs on a student's financial loan on personal property sold by dealers to purchasers on credit shall pay interest at the rate of 4.50% per annum on hold-backs, reserves or other money withheld from the dealer under any contract for financing such a purchase on credit. Interest on such money withheld shall be paid to each dealer on January 1 and July 1 of each year. (2) Any amount

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withheld by a person engaged in the making of such loans shall be due immediately upon close of the loan account. (3) Each person engaged in making such loans shall furnish each dealer as of January 1 and July 1 of each year a report showing the status of the dealer's hold-back account

or reserve, if any." The penalty for the violation of that statute is stated. The only reason we are introducing this at this time is to show that there is no legal efficacy in these legal arrangements between Associates, who are supposed to be the victims in this case, and secondly that they are really not, in fact, a victim. We are ready to prove it. Now, KRS 360.020 states that contracts for more than legal rates of interest are void for excess, etc. One, under that statute, all contracts shall—

The Court: Are you reading the statute?

Mr. Avedisian: Yes, I am, Your Honor.

The Court: Let's just quote the statute and forego the reading of the statute.

Mr. M. Avedisian: My final point on the issue of victim, Your Honor, is the Van Winkle vs. Commonwealth, 7 S. W. 2d 845, dated June 12, 1928, and I believe yesterday I made the error of putting the date 1968, and you were correct on that citation, the date, states, "Forgery

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cannot be established by merely showing that the defendant once had possession of a forged instrument, without identifying persons into whose hands it fell before reaching the injured person." Now, Your Honor, that is the reason why we need these witnesses in here, to find out exactly whose hands these contracts passed through after they were removed from the defendant and before they got to Associates and the money was layed down on the table. That is one of the reasons why they are material. The second case that I want to point out, Your Honor, is the Montgomery v. Commonwealth case 224 S. W. 878, a 1920 case which states, "Knowledge of the forgery remains an essential element of an uttering conviction." The final thing, Your Honor, is a final motion by the defendant. We are renewing our motion to produce any exculpatory or other evidence in the pos-

session of the prosecution which is in favor of the defendant discovered by the prosecutor since our last motion was made. Now, under that motion to produce, we have learned that the prosecution has taken polygraph tests of several employees, whether former or present, of Associates. We have not had access to those polygraph tests. Because of the fact that the contracts in question have passed through several hands before

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being sold and purchased, we think it is material, essential and necessary that the defense study those polygraph tests of the former or present employees of Associates. That, I think, is about all I have this afternoon, Your Honor, unless something else comes up. You don't want to take up the matter of the subpeonas right now, do you?

The Court: That's what I was trying to do a long time ago, before you brought up this other stuff. I have just been sitting back and listening. We will take it up when we all get through talking and then I will rule on it.

Mr. M. Avedisian: Your Honor, because of the arguments that I have set out here, the case law and the evidence without disclosing our entire case in order to compel the court that these witnesses are material, I am asking the Court at this time to issue our certificate for the witnesses specified in our petition.

Mr. A. Avedisian: One other thing, Judge, may I just interject here, these are the subpoenas which have been issued in accordance with the prior motion, and she asked me to give them to you.

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Mr. Bryant: Very little, Your Honor, but I would like to say a couple of things. Mr. Avedisian said that Associ-

ates was not a victim because the contracts have no legal efficacy and they are void. He cited a number of statutes to that effect. However, KRS 516.030-1(a) under which the defendant is indicted, well, excuse me—

The Court: It relates to that. Go ahead.

Mr. Bryant: We are talking about a contract. Just as an example, if we had three guys who walked up to the bank and they had come up with a contract to sell property and they discounted it to the bank, and the house had burned down the night before, that would be a void contract. These guys do it, but nevertheless, the defendants would be guilty of uttering a forged instrument. A void contract—they have uttered a forged instrument. So, that is really the same situation we have here. That is all I have to say on that.

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With respect to people intervening between Mr. Knapp and Associates getting the money, that is strictly a matter of fact. Mr. Knapp put the money directly to Associates and no one intervened in that. Mr. Avedisian says that the Commonwealth took polygraph tests. The first thing I can say about that is that the Commonwealth did not take polygraph tests, and the second thing is that they are not admissible in a Court of law anyway. That is all I have to say about anything. I will get back to this witness thing, but that is all I have to say about the other.

Mr. M. Avedisian: The Commonwealth didn't take polygraph tests, but the Associates did and they made them available for your inspection.

Mr. Bryant: That is not so, Mr. Avedisian. I haven't seen them. I don't have them.

The Court: Well, I think that question is moot anyway since they are not admissible into evidence regardless. I have a few comments of my own that I would like to make.

To begin with, one thing that was mentioned and discussed and argued by Mr. Avedisian respecting these contracts and their legal efficacy and so on, also he mentioned a usury interest, which of course, does not make a contract void. It might make it

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voidable as to any excess interest. I don't believe that the federal acts you quoted would prevent the prosecution of a criminal pending in any given state unless the statute under which the indictment is rendered is unconstitutional for some reason. It is certainly not up to me to interpret a federal act and their effects necessarily, in roundabout circumstances such as these are, as to their effect on Kentucky law. We are dealing with proving a Kentucky law or not proving it, one of the two, to the satisfaction of a jury beyond a reasonable doubt, if they would chose to do that. I think that is what it amounts to. Insofar as the application of those federal acts respecting the incidents that are involved here, I don't think they are applicable because there is nothing that indicates—and I have read them, as I said—there is nothing to indicate that they would advocate any state criminal law of any type anywhere at any time. That is my opinion. I am satisfied that the defendant does not share that opinion, but nevertheless, that is what it is. I think that any recourse that may be had under those particular statutes are related primarily to the funding by the federal government on the one hand, or any claim that might be made by an injured

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party such as the student or the borrower, as the case may be, and does not relate in any way to their applicancy to any criminal charges that might exist under state law, unless the law itself might be unconstitutional, which I don't think it is. So, that is the way that I feel about that.

That really means, I suppose, that we are down to the question of the witnesses. As it stands now, the only materiality of any of them that I am satisfied with are those that you both jointly agree are material witnesses here. We have got conflicts on some of the rest of them. I understand that one of the purposes for which the defense wants to introduce these witnesses is to show whose hands these contracts passed through. Is this correct, Mike?

Mr. M. Avedisian: That is correct, Your Honor.

The Court: And you feel that they are material based on that 1928 or 1926, or whenever it was, case. Of course, that referred to another statute.

Mr. A. Avedisian: The reason for my request, Your Honor, is that it is common sense that if the defendant, if we can prove that the defendant did not place those signatures on those contracts, and that the contract passed through three, four or five people before they got to Associates, any one or more of those

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other people could have put the signatures on there.

The Court: Well, what you are saying in effect is that these people have first hand knowledge as to who held these contracts?

Mr. M. Avedisian: No, Your Honor.

The Court: You are talking about number one, Mr. Hartwell?

Mr. Bryant: One through five, Mike, is that what you said, that these guys came voluntarily, and you were just going to subpoena them, is that right? On exhibit "A", I have written down here that these men came voluntarily, and you were just going to subpoena them, is that correct?

Mr. M. Avedisian: The new list or the old list? The new list, Hartwell, Gibbs, Watson, Miller and Albert are one through five.

Mr. Bryant: Now, I have a note where you said that these men came voluntarily last term and you were just going to subpoena them this time, is that right?

Mr. M. Avedisian: No, we will need a certificate on them.

Mr. Bryant: Mike, you say that Hartwell is the one who initially set up the line of credit?

Mr. M. Avedisian: Yes. Not only initially, he was doing it all through the period up to the commission of the alleged crime. All four of them are material, and if we are denied their presence, Your honor,

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EXHIBIT No. 29

KENTUCKY RULES OF CRIMINAL PROCEDURE

2.02 Complaint.

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath and signed by the complaining party before a magistrate or other officer authorized to issue a warrant of arrest.

Cross References

See Russell's Kentucky Practice, Form 155.01
Affidavit for search warrant, RCr 13.10.
Dismissal of complaint, RCr 9.64.
Magistrates, who are, RCr 1.06.
When clerks may issue warrants, KRS 26.330.

Comment (1962): The complaint is made before the same officers who are empowered to issue warrants, and serves as a substitute for the affidavit formerly required in felony cases under KRS 432.360 and the "information on

oath" required in Cr C 31. Heretofore the warrant has served to afford whatever basis was thought to be needed for a formal charge at this point in criminal proceedings. The warrant is preserved, retaining most of its original purpose, which is to serve as an order and authority to arrest the defendant. But the complaint becomes the charging instrument. The complaint provides a record and written evidence of the formal charge. It is a formal criminal charge similar to the civil complaint (CR 3). The warrant, on the other hand, is an arresting instrument.

Under Rules of Criminal Procedure it is necessary that a written complaint be submitted before the magistrate issues a warrant in either misdeameanor or felony cases. OAG 62-550.

EXHIBIT No. 30

KENTUCKY RULES OF CRIMINAL PROCEDURE

2.04 Warrant or summons; issuance.

(1) If from an examination of the complaint it appears to the magistrate, or other officer authorized to issue a warrant of arrest) that there is probable cause to believe that an offense has been committed and that the defendant committed it, he shall issue a warrant for the arrest of the defendant.

(2) A summons may issue instead of a warrant if there are reasonable grounds to believe that the defendant will appear in response thereto, or if the defendant is a corporation.

(3) If a defendant who has been duly summoned fails to appear, or if there is probable cause to believe that he will fail to appear, a warrant of arrest shall issue.

(4) More than one warrant or summons may issue on the same complaint.

Cross References

See Russell's Kentucky Practice, Form 155.02, 155.04
Search warrant, issuance, RCr 13.10
Justice not to sign blank warrant, KRS 25.760

Comment (1962): RCr 2.04 does not change the officers authorized to issue warrants (except for inclusion of circuit judges by the definition of "magistrates" in RCr 1.06), but bases the issuance of a warrant on a signed complaint in accordance with the requirements of Const. § 10 as to supporting oath or affirmation, thus incorporating the elements of Cr C 31 and KRS 432.360 (now repealed) that are not of doubtful constitutionality.

2.06 Warrant or summons; requisites.

(1) A warrant of arrest shall be in writing and in the name of the Commonwealth, shall be signed by the issuing officer with the title of his office and shall state the date when issued and the municipality or county where issued. It shall name or describe the offense charged to have been committed, specify the name of the defendant, or, if his name is unknown, any name or description by which he can be identified with reasonable certainty and the name of the complaining party or parties. The warrant shall be directed to all peace officers in the Commonwealth and shall direct that the defendant be arrested and brought before the magistrate issuing it (or, if it is not issued by a magistrate, before the judge of the court of which the issuing

authority is an officer) or, if he is absent or unable to act, before the nearest available magistrate.

(2) A summons shall be in the same form as a warrant except that it shall summon the defendant to appear before the magistrate issuing it (or, if it is not issued by a magistrate, before the judge of the court of which the issuing authority is an officer) at a stated time and place.

(3) If the offense charged is bailable, the magistrate issuing a warrant of arrest shall fix the amount of bail and endorse it on the warrant. (Am. Eff. 1-1-64)

Cross References

See Russell's Kentucky Practice, Form 155.02, 155.04

Defective warrant, summons or citation, RCr 2.08.

Am. Jur. and A.L.R. Annotations

Arrest in criminal cases. 5 Am. Jur. 2d, Arrest, § 4 to 51.

Comment (1962): The essentials of the warrant are the same as in Cr C 27, 142, 312 and 328 except that where the Code provided that the defendant must be named in the warrant, RCr 2.06 provides that if his name is unknown a description is sufficient if it is such that he may be identified "with reasonable certainty." This is not an approval of the "John Doe" warrant; the accused must be described with reasonable certainty. This is existing case law in Kentucky and the phrase is used now in most Codes. See for example New Jersey Rules of Crim. Proc. 2:3-2 (form 1).

It is provided also that the names of the complaining party or parties be stated so that the defendant may have that information when served. This information was available to him under the practice heretofore existing, since it appeared in the affidavit required by KRS 432.360 (now repealed). The language of RCr 2.06 has been made consistent with the requisites of process on indictment and information. The summons is much like that in Cr C 146, 311 and 328, subject to the same variations as to name of defendant.

The magistrate issuing a warrant of arrest has a discretion as to whom (peace officer) the warrant shall be delivered for execution. OAG 70-131.

Arrest without warrant, on authority of a telegram of a person not shown to be guilty of a felony, renders arresting officer and judge committing liable to suit. Glazar v. Hubbard, 102 Ky. 68, 19 R 1025, 42 S. W. 1114.

Style of prosecution for violation of city ordinance should be in the name of the city against the accused. Louisville v. Wemhoff, 116 Ky. 812, 25 R. 995, 76 S. W. 876.

Where "John Doe" warrant delivered to the chief of police did not disclose the identity of the person to be arrested, and since there was nothing in record to indicate that any additional information was given, there was no duty on part of police chief to deliver this defective warrant to a police officer for execution. Boyd v. Town of Martin, 303 Ky. 524, 198 S. W. 2d 204.

2.08 Defective warrant, summons or citation.

(1) No person arrested under a warrant or appearing in response to a summons or citation shall be discharged from custody or dismissed because of any defect of form in the warrant or summons, but the warrant or summons may be amended so as to remedy any such defect.

(2) If during the preliminary hearing or trial of any person arrested under a warrant, or appearing in response to a summons or citation it appears that the warrant, summons or citation does not properly name or describe the defendant, or the offense with which he is charged, or that

although not guilty of the offense specified in the warrant, summons or citation, there is probable cause to believe that he is guilty of some other offense, the magistrate shall not discharge or dismiss the defendant but shall forthwith cause a new complaint to be filed and shall thereupon issue a new warrant or summons.

2.10 Warrant and summons; execution and service.

(1) A warrant of arrest may be executed by any peace officer. The officer need not have the warrant in his possession at the time of arrest, but in that event he shall inform the defendant of the offense charged and the fact that a warrant has been issued, and upon request show the warrant, or a copy of it, to the defendant as soon as possible.

(2) A summons may be served by any peace officer. It shall be served upon a defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

2.12 Warrant or summons; return.

(1) The officer executing a warrant shall make return thereof to the magistrate before whom the defendant is brought.

(2) The officer serving a summons shall make return thereof to the magistrate before whom the summons is returnable on or before the day named therein for the appearance of defendant. If the summons is served in a county other than that in which it was issued, the return may be made by mail.

Cross References

Amendment of return, KRS 70.085.

Return of process, KRS 70.079, 70.080, 70.360.

Comment (1962): RCr 2.12 is much like Cr C 33 and 34 except that provisions for delivery and transmittal of warwant by arresting officer where bail is given on arrest are deleted as no longer necessary, in view of elimination of the taking of bail on arrest and the requirement (RCr 3.02) that the arrested person be taken immediately before a magistrate.

Similar provisions for transmittal of papers by magistrate are contained in RCr 3.02.

The provision for transmittal of papers in out-of-county arrests is retained for summons. This comes from Nat. Conf. of Com. on Uniform State Laws.

Rule 3.18 Order of commitment; bail

If the defendant is committed to jail, the magistrate shall make out a written order of commitment, signed by him, which shall be delivered to the jailer by the peace officer who executes the order of commitment. If the offense is bailable, the magistrate must fix the sum for which bail is to be given and enter it upon the order of commitment. Thereafter, the bail shall be taken by the clerk of the court in which the defendant is held to appear.

EXHIBIT No. 31

KENTUCKY REVISED STATUTES

431.005 Arrest by peace officers; by private persons

(1) A peace officer may make an arrest in obedience to a warrant, or without a warrant when a felony or misdemeanor is committed in his presence or when he has reasonable grounds to believe that the person being arrested has committed a felony.

(2) A private person may make an arrest when a felony has been committed in fact and he has reasonable grounds to believe that the person being arrested has committed it.
HISTORY: 1962 c 234, § 31, eff. 1-1-63

Cross References

Officer may command the power of county, 70.060
Arrest by conservation and peace officers, 150.090
When a warrant may be issued, RCr 2.04
Arrest in criminal cases, 5 Am. Jur. 2d, Arrest § 3 et seq.

Chapter 516
FORGERY AND RELATED OFFENSES

Cross References

See Brickey, Kentucky Criminal Law § 16.07(1)

516.010 Definitions

The following definitions apply in this chapter unless the context otherwise requires:

(1) "Written instrument" means any instrument or article containing written or printed matter or its equivalent used for the purpose of reciting, embodying, conveying or recording information, or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

(2) "Complete written instrument" means a written instrument which purports to be a genuine written instrument fully drawn with respect to every essential feature thereof.

(3) "Incomplete written instrument" means a written instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

(4) To "falsely alter" a written instrument means to change, without the authority of anyone entitled to grant it, a written instrument, whether it be in complete or incomplete form, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner, so that such instrument in its thus altered form appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.

(5) To "falsely complete" a written instrument means to transform, by adding, inserting or changing matter, an incomplete written instrument into a complete one, without the authority of anyone entitled to grant it, so that the complete instrument appears or purports to be in all respects an authentic creation of or fully authorized by its ostensible maker or drawer.

(6) To "falsely make" a written instrument means to make or draw a complete written instrument in its entirety or an incomplete written instrument, which purports to be

an authentic creation of its ostensible maker or drawer, but which is not either because the ostensible maker or drawer is fictitious or because, if real, he did not authorize the making or drawing thereof.

(7) "Forged instrument" means a written instrument which has been falsely made, completed or altered.

HISTORY: 1974 H 232, § 132, eff. 1-1-75

EXHIBIT No. 32

KENTUCKY RULES OF CRIMINAL PROCEDURE

8.16 Defenses which may be raised by motion.

Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion.

Cross References

Defenses which must be raised by motion, RCr 8.18.

Am. Jur. and A.L.R. Annotations

Double jeopardy, generally. 21 Am. Jur. 2d, Criminal Law § 135, 165 to 169, 473 to 475.

Comment (1962): RCr 8.16 goes to "permissive" use of preliminary motions. It is the same as Fed. Crim. Rule 12(b)(1). Cf. CR 12. The defenses involved in this provision are most like the grounds for a demurrer.

8.18 Defenses which must be raised by motion.

Defenses and objections based on defects in the institution of the prosecution or in the indictment or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion before trial. The motion shall include all such defenses and objections then available to the defendant. Failure to present

any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the proceedings.

Cross References

See Russell's Kentucky Practice, Form 159.03

Defenses which may be raised by motion, RCr 8.16.

Comment (1962): RCr 8.18 goes to the "mandatory" use of preliminary motions. It is the same as Fed. Crim. Rule 12(b)(2). The defenses here involved are most like the grounds for a motion to set aside. This rule does not change the practice under CrC 158 or under 167 and 230 dealing with jurisdiction.

An alleged defect in the indictment is waived unless raised by a motion. Clark v. Com., 418 S. W. 2d 241 (1967).

Rule 9.26 Substantial error

A conviction shall be set aside on motion in the trial court, or the judgment reversed on appeal, for any error or defect when, upon consideration of the whole case, the court is satisfied that the substantial rights of the defendant have been prejudiced.

Cross References

See Murrell, Kentucky Criminal Practice § 22.04, 22.13

Preservation of error, RCr 10.12

Rule 7.24 Discovery and inspection

(1) On motion of a defendant the court may order the attorney for the Commonwealth to permit the defendant to inspect and copy or photograph any relevant (a) written

or recorded statements or confessions made by the defendant, or copies thereof, that are known by the attorney for the Commonwealth to be in the possession, custody or control of the Commonwealth, and (b) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, that are known by the attorney for the Commonwealth to be in the possession, custody or control of the Commonwealth.

(2) On motion of a defendant the court may order the attorney for the Commonwealth to permit the defendant to inspect and copy or photograph books, papers, documents or tangible objects, or copies or portions thereof, that are in the possession, custody or control of the Commonwealth, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable. This provision does not authorize pretrial discovery or inspection of reports, memoranda, or other documents made by officers and agents of the Commonwealth in connection with the investigation or prosecution of the case, or of statements made to them by witnesses or prospective witnesses (other than the defendant).

* * * * * * *

(Adopted eff. 1-1-65)

Cross References

See Murrell, Kentucky Criminal Practice § 9.06, 9.19 to 9.24, 11.07, 22.10

Criminal discovery. 23 Am. Jur. 2d, Depositions and Discovery § 307 to 323

EXHIBIT No. 33

PETITION FOR CHANGE OF VENUE

1

Comes defendant, Jerome A. (Jerry) Knapp, in the above-styled prosecution, by his attorneys, being indicted for having criminal possession and utterance of a forged instrument, with knowledge that it is forged, and with the intent to defraud, deceive or injure another, and says that he is informed and so believes that he cannot have a fair and impartial trial of this prosecution in McCracken County, Kentucky, the county in which said prosecution is pending, on account of the state of the public mind at this time in McCracken County, Kentucky, and files this Petition for Change of Venue pursuant to KRS 452.210 and the Kentucky Rules of Criminal Procedure and in support of said petition, states as follows:

1. That, defendant files herewith, appended hereto and made a part hereof, the affidavits of Robert Schmidt, Gene Grief and Letha Martin of McCracken and Marshall County, Kentucky, three credible persons, housekeepers of McCracken and Marshall Counties, Kentucky, not of kin to nor of counsel for defendant, as required as a matter of law.

2

2. That, defendant files herewith, appended hereto, several news articles since the indictment which have appeared in the Paducah Sun-Democrat, Paducah, McCracken County, Kentucky, a newspaper of general circulation within this community, which are false, inaccurate, overexaggerated, detrimental and prejudicial to the substantial rights of the defendant and which defendant does not know and has no means of determining the specific source of said news stories about him.

3. That, such news articles appearing in the Paducah Sun-Democrat have not only been false, but that the newspaper has made other derogatory references to the defendant, which have influenced the general public in this community to believe that the defendant is guilty before trial.

4. That, it will be impossible for the defendant to impanel a jury of twelve (12) persons in McCracken County, Kentucky who will not have a predetermined notion of defendant's guilt of the crime so charged.

5. That, defendant says that he is informed and believes that the foregoing statements of fact contained herein are true.

6. That, defendant says that this petition is not made for delay, but that justice may be done.

7. That, no previous petition for a change of venue has been filed herein.

8. That, Section 11 of the Bill of Rights of the Constitution of the Commonwealth of Kentucky and the Constitution of the United States state that, in all criminal prosecutions, the accused has the right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his

favor. He can not be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land; and in prosecutions by indictment or information, he shall have a speedy public trial by an impartial jury of the vicinage; but the general assembly may provide by a general law for a change of venue in such prosecutions for both the defendant and the Commonwealth, the change to

be made to the most convenient county in which a fair trial can be obtained.

9. That, this case has been set for trial on May 23, 1977 at 9:00 a.m. o'clock and that this request for relief is being made within a reasonable time in advance of trial.

10. That, a notice of defendant's petition for a change of venue has been mailed and/or personally delivered to Hon. Albert Jones, Commonwealth Attorney of McCracken County, Kentucky, McCracken County Courthouse, Paducah, Kentucky at the time of filing the petition herein.

WHEREFORE, defendant, Jerome A. (Jerry) Knapp prays for the Court to enter an Order transferring this cause for trial to some county other than McCracken County, Kentucky.

Dated this 22nd day of August, 1977.

Avedisian & Avedisian
(s) By Michael Avedisian
1200 Broadway
Paducah, Kentucky 42001
Telephone 502-442-4379
Attorneys for Defendant

JEROME A. (JERRY) KNAPP states that he is the defendant in this cause; that, he has read the foregoing Petition for Change of Venue and that the statements contained therein are true.

(s) Jerome A. (Jerry) Knapp

State of Kentucky }
County of McCracken } ss:

SUBSCRIBED, SWORN to, acknowledged and verified before me by Jerome A. (Jerry) Knapp, at Paducah, McCracken County, Kentucky on this the 29th day of April, 1977.

My Commision Expires May 3, 1980

(s) Ronda R. Fiehe
Notary Public

PLEASE TAKE NOTICE, that the undersigned will bring the foregoing Petition for Change of Venue on for hearing before the Court at the earliest convenience of the Court, or as soon thereafter as counsel can be heard.

NOTICE OF MOTION

PLEASE TAKE NOTICE, that the undersigned will bring the foregoing Petition for Change of Venue on for hearing before the Court at the earliest convenience of the Court, or as soon thereafter as counsel can be heard.

DATED this the 22nd day of August, 1977.

(s) Michael Avedisian

EXHIBIT No. 34

ORDER

This cause coming on for hearing before the Court and the Court being sufficiently advised,

IT IS HEREBY ORDERED that the jailer of McCracken County, Kentucky deliver to this Court the Confinement and Release record in connection with the arrest of defendant, Jerome A. (Jerry) Knapp.

IT IS FURTHER ORDERED by the Court that the Clerk of McCracken Circuit Court, Paducah, Kentucky certify a copy of the Confinement and Release record of Jerome A. (Jerry) Knapp and deliver a copy of the same to defend-

ant's attorneys, forthwith. The original record shall be returned to this County Jailer.

(s) Lloyd C. Emery
Judge, McCracken Circuit Court
Division No. I

September 24, 1979

EXHIBIT No. 35

CONFINEMENT RECORD

State of Kentucky
County of McCracken

I, Anne Johnston, Deputy Clerk of the McCracken County Quarterly Court, in and for the county and state aforesaid, do hereby certify that the hereto attached Confinement record (Mittimus) issued on the 9th day of April, 1976, and signed by Honorable Raymond C. Schultz, County Judge, McCracken County, Kentucky, in the case of Commonwealth of Kentucky vs. Jerome A. (Jerry) Knapp, is a true copy thereof.

IN TESTIMONY WHEREOF witness my hand as Deputy Clerk this the 25th day of September, 1979.

Sue D. Roberson, Clerk
Deputy Clerk
(s) By: Anne Johnston, D.C.

Confinement Record

(No hand yet)

Bond 100,000.00
one hundred thousand

McCRACKEN QUARTERLY COURT

MITTIMUS

The Commonwealth of Kentucky to the
Jailer of McCracken County:

You are commanded to receive Jerry Knapp into the jail of McCracken County, and him safely keep until discharged by due course of law, he having been arrested on a charge of Forg
or until further order of release is given by me.

Given under my hand as Judge of the McCracken County Court, this the 9 day of April, 1976.

(s) Raymond C. Schultz
County Judge

EXHIBIT No. 36

RELEASE RECORD

State of Kentucky
County of McCracken

I, Anne Johnston, Deputy Clerk of the McCracken County Quarterly Court, in and for the county and state aforesaid, do hereby certify that the hereto attached Release record, issued on the 12th day of April, 1976, and signed by Honorable Raymond C. Schultz, County Judge, McCracken County, Kentucky, in the case of Commonwealth of Kentucky vs. Jerome A. (Jerry) Knapp, is a true copy thereof.

IN TESTIMONY WHEREOF witness my hand as Deputy Clerk this the 25th day of September, 1979.

Sue D. Roberson, Clerk
(s) By: Anne Johnston, D.C.
Deputy Clerk

Release Record

McCRACKEN QUARTERLY COURT

RELEASE

The Commonwealth of Kentucky to the
Jailer of McCracken County:

Jerry Knapp having made bond —
you are hereby instructed to release Jerry Knapp —
Paducah, Ky. April 12, 1976.

(s) Raymond C. Schultz, C.J.
County Judge

EXHIBIT No. 37

ORDER OF CONFINEMENT

CERTIFICATION

Circuit Court
McCracken County

I, Alfred Obermark Clerk of the Circuit Court, do certify that the following are true and correct copy(s) of the Confinement record (Mittimus) issued on the 9th day of April, 1976, and signed by Honorable Raymond C. Schultz, County Judge, McCracken County, Kentucky, in the case of Commonwealth of Kentucky vs. Jerome A. (Jerry) Knapp. as recorded in the Office of the Circuit Clerk of McCracken County.

IN TESTIMONY WHEREOF witness my hand as Clerk aforesaid, this the 24th day of September, 1979.

(s) By: Alfred Obermark, Clerk

Order of Confinement

(No hand yet)

Bond 100,000.00
one hundred thousand

McCRACKEN QUARTERLY COURT

MITTIMUS

The Commonwealth of Kentucky to the
Jailer of McCracken County:

You are commanded to receive Jerry Knapp into the jail of McCracken County, and him safely keep until discharged by due course of law, he having been arrested on a charge of Forg
or until further order of release is given by me.

Given under my hand as Judge of the McCracken County Court, this the 9 day of April, 1976.

(s) Raymond C. Schultz, County Judge

EXHIBIT No. 38

ORDER OF RELEASE

CERTIFICATION

Circuit Court
McCracken County

I, Alfred Obermark Clerk of the Circuit Court, do certify that the following are true and correct copy(s) of the Release record, issued on the 12th day of April, 1976, and signed by Honorable Raymond C. Schultz, County Judge, McCracken County, Kentucky, in the case of Commonwealth of Kentucky vs. Jerome A. (Jerry) Knapp, as recorded in the Office of the Circuit Clerk of McCracken County.

In TESTIMONY WHEREOF witness my hand as Clerk aforesaid, this the 24th day of September, 1979.

(s) By: Alfred Obermark, Clerk

Order of Release

McCRACKEN QUARTERLY COURT

RELEASE

The Commonwealth of Kentucky to the
Jailer of McCracken County:

Jerry Knapp having made bond
you are hereby instructed to release Jerry Knapp
Paducah, Ky. April 12, 1976.

(s) Raymond C. Schultz, C.J.
County Judge

EXHIBIT No. 39

COMPLAINT/WARRANT FOR ARREST

COMPLAINT—SO7 6-237

The affiant, Mark P. Bryant, Assistant Commonwealth's Attorney, 2nd Judicial District, McCracken County, Ky.
COUNT 1:

On the 30th day of December, 1975, Jerome (Jerry) A. Knapp, defendant, I.E.T., 1301 Building, Paducah, Kentucky (business), Route #1, Cambridge Shores, Gilbertsville, Kentucky (residence), committed Second Degree Criminal Possession of a forged instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment contract and tuition agreement, bearing the forged signature of L. Brown and obtained $2,486.25, in violation of KRS 516.060. (Penalty: Class D Felony—1 to 5 years (each count).

COMPLAINT—SO7 6-237(a)

COUNT 2:

Jerome (Jerry) A. Knapp on the 18th day of Sept., 1975 committed Second Degree Criminal Possession of

Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of Donny Wiman and obtained $2,486.25, in violation of KRS 516.060. (Class D Felony—1 to 5 years (each Count).

COMPLAINT—SO7 6-237(b)

COUNT 3:

Jerome (Jerry) A. Knapp, on the 19th day of December, 1975, committed Second Degree Criminal Possession of Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of L. Wiman and obtained $2,486.25, in violation of KRS 516.060. (Penalty: Class D Felony—1 to 5 years (each Count).

COMPLAINT—SO7 6-237(c)

COUNT 4:

Jerome (Jerry) A. Knapp, on the 31st day of December, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of L. Ward and obtained $2,486.25, in violation of KRS 516.060. (Penalty: Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(d)

COUNT 5:

Jerome (Jerry) A. Knapp, on the 15th day of December, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a

forged retail installment and tuition agreement, bearing the forged signature of S. Ray and obtained $2,486.25, in violation of KRS 516.060. (Penalty: Class D Felony—1 to 5 years) (each Count).

COMPLAINT—SO7 6-237(e)

COUNT 6:

Jerome (Jerry) A. Knapp, on the 10th day of December, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of A. Morrow and obtained $2,486.25, in violation of KRS 516.060. (Penalty: Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(f)

COUNT 7:

Jerome (Jerry) A. Knapp, on the 20th day of November, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc. a forged retail installment and tuition agreement, bearing the forged signature of Bill Johnson and obtained $2,486.25, in violation of KRS 516.060. (Penalty: Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(g)

COUNT 8:

Jerome (Jerry) A. Knapp, on the 20th day of November, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of Dawson Nuszbaum and obtained

$2,486.25, in violation of KRS 516.060. (Penalty: Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(h)

COUNT 9:

Jerome (Jerry) A. Knapp, on the 24th day of November, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of Steven Mosley and obtained $2,486.25, in violation of KRS 516.060. (Penalty: Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(i)

COUNT 10:

Jerome (Jerry) A. Knapp, on the 20th day of November, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of Steven Morris and obtained $2,486.25, in violation of KRS 516.060. (Penalty: Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(j)

COUNT 11:

Jerome (Jerry) A. Knapp, on the 20th day of January, 1976, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of R. Essner and obtained $2,486.25, in violation of KRS 516.060. (Penalty: Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(k)

COUNT 12:

Jerome (Jerry) A. Knapp, on the 30th day of December, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and Tuition agreement, bearing the forged signature of Perry Brown and obtained $2,486.25, in violation of KRS 516.060. (Penalty: Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(l)

COUNT 13:

Jerome (Jerry) A. Knapp, on the 10th day of December, 1975, committed Second Degree Criminal Possession of Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of Ken Harmen and obtained $2,486.25, in violation of KRS 516.060. (Penalty: Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(m)

COUNT 14:

Jerome (Jerry) A. Knapp, on the 11th day of December, 1975, committed Second Degree Criminal Possession of Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of E. Mars, and obtained $2,486.25, in violation of KRS 516.060. (Penalty: Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(n)

COUNT 15:

Jerome (Jerry) A. Knapp on the 10th day of December, 1975, committed Second Degree Criminal Possession of a

Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of Alan Duhs an dobtained $2,486.25, in violation of KRS 516.060. (Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(o)

COUNT 16:

Jerome (Jerry) A. Knapp on the 15th day of December, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of Rick Lawson and obtained $2,486.25, in violation of KRS 516.060. (Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(p)

COUNT 17:

Jerome (Jerry) A. Knapp on the 18th day of December, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associated Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of Gene Weller and obtained $2,486.25, in violation of KRS 516.060. (Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(q)

COUNT 18:

Jerome (Jerry) A. Knapp on the 20th day of January, 1976, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged

retail installment and tuition agreement, bearing the forged signature of L. Cunningham and obtained $2,486.25, in violation of KRS 516.060. (Class D Felony—1 to 5 years) (each count).

COMPLAINT—SO7 6-237(r)

COUNT 19:

Jerome (Jerry) A. Knapp on the 19th day of December, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of W. Catron and obtained $2,486.25, in violation of KRS 516.060. (Class D Felony—1 to 5 years) (each Count).

COMPLAINT—SO7 6-237(s)

COUNT 20:

Jerome (Jerry) A. Knapp on the 26th day of November, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of Lee Glenn and obtained $2,486.25, in violation of KRS 516.060. (Class D Felony—1 to 5 years) (each Count).

COMPLAINT—SO7 6-237(t)

COUNT 21:

Jerome (Jerry) A. Knapp on the 13th day of November, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of Tom Bolton and obtained $2,486.25,

in violation of KRS 516.060. (Class D Felony—1 to 5 years) (each Count).

COMPLAINT—SO7 6-237(u)

COUNT 22:

Jerome (Jerry) A. Knapp on the 13th day of November, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of Ray Allen and obtained $2,486.25, in violation of KRS 516.060. (Class D Felony—1 to 5 years) (each Count).

COMPLAINT—SO7 6-237(v)

COUNT 23:

Jerome (Jerry) A. Knapp on the 13th day of November, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of William Allen and obtained $2,486.25, in violation of KRS 516.060. (Class D Felony—1 to 5 years) (each Count).

COMPLAINT—SO7 6-237(w)

COUNT 24:

Jerome (Jerry) A. Knapp on the 4th days of February, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of Eugene Weller and obtained $2,486.25, in violation of KRS 516.060. (Class D Felony—1 to 5 years) (each Count).

COMPLAINT—SO7 6-237(x)

COUNT 25:

Jerome (Jerry) A. Knapp on the 18th day of December, 1975, committed Second Degree Criminal Possession of a Forged Instrument by uttering to an employee of Associates Finance Services Company of Kentucky, Inc., a forged retail installment and tuition agreement, bearing the forged signature of L. Coates and obtained $2,486.25, in violation of KRS 516.060. (Class D Felony—1 to 5 years) (each Count).

Subscribed and sworn to before the undersigned Judge by the complainant this the 12th day of April, 1976.

(s) Mark P. Bryant, Complainant
Assistant Commonwealth Attorney
2nd Judicial District of Kentucky
McCracken County Courthouse
Paducah, Kentucky 42001
442-3325

WARRANT

Commonwealth of Kentucky
To All Peace Officers in the Commonwealth } ss.

The undersigned Judge, having considered the complaint herein does hereby command you to (arrest) Jerome (Jerry) A. Knapp and bring said person or persons forthwith before the Judge of the Quarterly Court of McCracken County, Kentucky, (or if he be absent or unable to act, before the nearest available magistrate, to answer the above complaint made by Mark P. Bryant charging said person or persons with the offense of Second Degree Criminal Possession of a Forged Instrument (25 Counts) against the peace and dignity of the Commonwealth of Kentucky.

Formal hearing will be held before the McCracken Quarterly Court on the 12th day of April, 1976 at the hour

of 1:30 (p.m.) and you will have then and there this writ, with due return now you have executed it.

The foregoing complaint was sworn to before me and this writ was issued in McCracken County, Kentucky, this the 12th day of April, 1976.

(s) Raymond C. Schultz
Judge, McCracken Quarterly Court

COMMITMENT TO JAIL AND
ORDER SETTING BAIL

The Jailer of McCracken County is commanded to receive Jerome (Jerry) A. Knapp into the jail of McCracken County, he having been arrested on the charge of Second Degree Criminal Possession of a Forged Instrument (25 Counts). The said Jailer will safely keep the defendant until discharged by due process of law or until further orders of release are given by me.

The within named defendant is allowed to give bail in the sum of $100,000.00 (Reduced to $25,000 cash by Judge Raymond C. Schultz) upon his executing a bail bond with good surety.

(s) Raymond C. Schultz
Judge, McCracken Quarterly Court

I, Alfred Obermark, Clerk of the McCracken Circuit Court, do certify that the following are true and correct copy(s) of the Complaint taken out on the 12th day of April, 1976 and the warrant taken out on the 12th day of April, 1976 signed by Hon. Raymond C. Schultz, Judge, McCracken Quarterly Court in the case of Jerome (Jerry) A. Knapp. as recorded in the Office of the Circuit Clerk of McCracken County.

In TESTIMONY WHEREOF witness my hand as Clerk aforesaid, this the 24th day of September, 1979.

Alfred Obermark, Clerk
(s) By: Karen Granner, D.C.